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General

Part Cross-References
Nonmunicipal corporations, Art. XIII, sec. 1, Mont. Const.

35-1-101. Short title. This chapter shall be known and may be cited as the "Montana Business Corporation Act".

History: **En. Sec. 1, Ch. 300, L. 1967; R.C.M. 1947, 15-2201.**

35-1-102. Definitions. As used in this chapter, unless the context otherwise requires, the following terms apply:

(1) "Corporation" or "domestic corporation" means a corporation for profit subject to the provisions of this chapter, except a foreign corporation.

(2) "Foreign corporation" means a corporation for profit organized under laws other than the laws of this state for a purpose or purposes for which a corporation may be organized under this chapter.

(3) "Registered agent" means the person appointed as an agent of the corporation upon whom any process, notice, or demand required or permitted by law to be served upon the corporation may be served.

(4) "Articles of incorporation" means the original or restated articles of incorporation or articles of consolidation and all amendments thereto including articles of merger.

(5) "Shares" means the units into which the proprietary interests in a corporation are divided.

(6) "Subscriber" means one who subscribes for shares in a corporation, whether before or after incorporation.

(7) "Shareholder" means one who is a holder of record of shares in a corporation and is synonymous with the term "stockholder". If the articles of incorporation or the bylaws so provide, the board of directors may adopt by resolution a procedure whereby a shareholder of the corporation may certify in writing to the corporation that all or a portion of the shares registered in the name of such shareholder are held for the account of a specified person or persons. The resolution shall set forth the classification of a shareholder who may certify; the purpose or purposes for which the certification may be made; the form of certification and information to be contained therein; if the certification is with respect to a record date or closing of the stock transfer books, the time after the record date or closing of the stock transfer books within which the certification must be received by the corporation; and other provisions with respect to the procedure as are considered necessary or desirable. Upon receipt by the corporation of a certification complying with the procedure, the persons specified in the certification shall be considered, for the purpose or purposes set forth in the certification, to be the holders of record of the number of shares specified in place of the shareholder making the certification.

(8) "Authorized shares" means the shares of all classes which the corporation is authorized to issue.

(9) (a) "Filed with the secretary of state" is considered to be the time of receipt of a document by him, if he subsequently finds that it conforms to law. The finding relates back to the time of receipt, but receipt by the secretary of state may not of itself constitute filing under this chapter.

(b) The secretary of state may treat a facsimile copy of a document and the signatures on the facsimile copy in the same manner as an original for purposes of subsection (9)(a), provided that he receives the original document within 5 working days of the receipt of the facsimile copy. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy. A facsimile copy may be filed under subsection (9)(a) if it:

(i) is produced by a method of transmission of images in which the image is scanned at the transmitter, reconstructed at the receiving station, and duplicated on paper at the receiving station; and

(ii) is legible and the same size as the original.

(c) During the 5-day period referred to in subsection (9)(b), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.

(d) If the original document is not received within 5 working days of receipt of the facsimile copy as provided in subsection (9)(b), the filing of the facsimile copy is void.

(e) A person who files a false document by facsimile copy is liable to the party aggrieved for three times the amount of damages resulting from the filing of the false document.

(10) "Distribution" means a direct or indirect transfer by a corporation of money or other property (except its own shares) or incurrence of indebtedness to or for the benefit of any of its shareholders in respect to any of its shares, whether by dividend or by purchase, redemption, or other acquisition of its shares or otherwise.

History: En. Sec. 2, Ch. 300, L. 1967; amd. Sec. 1, Ch. 152, L. 1969; R.C.M. 1947, 15-2202; amd. Sec. 1, Ch. 475, L. 1981; amd. Sec. 2, Ch. 273, L. 1989.

Compiler's Comments

1989 Amendment: Inserted (9)(b) through (9)(e) relating to filing of documents by facsimile copy; and made minor changes in form and phraseology.

Cross-References

Reduction of tuition charge by tax amount paid within school district by parent shareholder of domestic corporation, 20-5-303, 20-5-313.

35-1-103. Applicability. (1) Every corporation existing, including foreign corporations qualified to do business in this state, on December 31, 1968, shall file an annual report with the secretary of state setting forth the information prescribed by 35-1-1101. The designation of the registered office of the corporation in this state and the address thereof and the designation of its resident agent in this state at such address contained in the first annual report of the corporation shall be in lieu of designating such office and agent in the articles of incorporation of such corporation, and such designation shall continue until changed as provided in 35-1-306.

(2) Any certificates of stock issued by existing corporations after December 31, 1968, shall conform to the requirements of 35-1-610.

(3) The provisions of this chapter are applicable to every corporation unless a special provision is made in relation thereto inconsistent with some provision of this chapter, in which case the special provision prevails.

History: En. Sec. 136, Ch. 300, L. 1967; R.C.M. 1947, 15-22-136(part).

35-1-104. Application to foreign and interstate commerce. The provisions of this chapter shall apply to commerce with foreign nations and among the several states only insofar as the same may be permitted under the provisions of the constitution of the United States.

History: En. Sec. 137, Ch. 300, L. 1967; R.C.M. 1947, 15-22-137.

35-1-105. Repeal of prior act not to affect rights accrued or liabilities incurred. The repeal of a prior act by this chapter shall not affect any right accrued or established or any liability or penalty incurred under the provisions of such act prior to the repeal thereof.

History: En. Sec. 139, Ch. 300, L. 1967; R.C.M. 1947, 15-22-139.

Cross-References
All statutes subject to repeal, 1-2-110.

35-1-106. Reservation of power. The legislature shall at all times have power to prescribe such regulations, provisions, and limitations as it may deem advisable, which regulations, provisions, and limitations shall be binding upon any and all corporations subject to the provisions of this chapter, and the legislature shall have power to amend, repeal, or modify this chapter at pleasure.

History: En. Sec. 138, Ch. 300, L. 1967; R.C.M. 1947, 15-22-138.

35-1-107. Permissible purposes for incorporation. Corporations may be organized under this chapter for any lawful purpose or purposes, except for the purpose of banking or insurance.

History: En. Sec. 3, Ch. 300, L. 1967; R.C.M. 1947, 15-2203.

Cross-References
Banks — formation and reorganization, Title 32, ch. 1, part 3.

Certificate of authority for insurance transactions, 33-2-101.

Name restrictions — foreign corporations, 35-1-1006.

35-1-108. General powers. Each corporation shall have power to:

(1) have perpetual existence by its corporate name unless a limited period of duration is stated in its articles of incorporation;

(2) sue and be sued, complain and defend, in its corporate name;

(3) have a corporate seal which may be altered at pleasure and to use the same by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced;

(4) purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use, and otherwise deal in and with real or personal property or any interest therein, wherever situated, and to acquire property by proceedings in eminent domain;

(5) sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;

(6) lend money and use its credit to assist its employees;

(7) purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of and otherwise use and deal in and with shares or other interests in or obligations of other domestic or foreign corporations, associations, partnerships, joint ventures, cooperatives, or individuals or direct or indirect obligations of the United States or of any other government, state, territory, governmental district, or municipality or of any instrumentality thereof;

(8) make contracts and guarantees and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and income;

(9) lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested;

(10) conduct its business, carry on its operations, and have offices and exercise the powers granted by this chapter in any state, territory, district, or possession of the United States, or in any foreign country;

(11) elect or appoint officers and agents of the corporation and define their duties and fix their compensation;

(12) make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the corporation;

(13) make donations for the public welfare or for charitable, religious, scientific, or educational purposes and in time of war to make donations in aid of war activities;

(14) transact any lawful business in aid of governmental policy;

(15) pay pensions and retirement benefits and establish pension plans, pension trusts, profit-sharing plans, stock bonus plans, stock option plans, insurance plans, and incentive plans for any or all of its directors, officers, and employees;

(16) cease its corporate activities and surrender its corporate franchise;

(17) be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other enterprise;

(18) have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

History: En. Sec. 4, Ch. 300, L. 1967; R.C.M. 1947, 15-2204; amd. Sec. 2, Ch. 475, L. 1981.

Cross-References

Acknowledgment of instruments by corporations, 1-5-201 through 1-5-204.

Securities regulation, Title 30, ch. 10.

Lack of contractual rights in appointed agent or officer, 35-1-411.

Appointment of agent when corporations joined, 35-1-807.

Activities not considered to be transacting business, 35-1-1002.

General powers of nonprofit corporations, 35-2-107.

Powers of corporations sole, 35-3-205.

Failure to appoint and maintain registered agent, 35-6-102.

35-1-109. Liability of and to ostensible corporations. All persons who assume to act as a corporation without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof.

History: En. Sec. 135, Ch. 300, L. 1967; R.C.M. 1947, 15-22-135; amd. Sec. 3, Ch. 475, L. 1981.

Cross-References

Multiple defendants jointly and severally liable — right of contribution, 27-1-703.

Stock assessments — delinquency sale, 35-1-604.

35-1-110. Defense of ultra vires. No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation is invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

(1) in a proceeding by a shareholder against the corporation to enjoin the doing of any act or acts or the transfer of real or personal property by or to the corporation. If the unauthorized acts or transfer sought to be enjoined are being or are to be performed or made pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it considers the same to be equitable, set aside and enjoin the performance of such contract and in so doing may allow to the corporation or to the other parties to the contract, as the case may be,

compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract may not be awarded by the court as a loss or damage sustained.

(2) in a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative or through shareholders in a representative suit, against the incumbent or former officers or directors of the corporation;

(3) in a proceeding by the secretary of state or the attorney general, as provided in chapter 6, to dissolve the corporation or in a proceeding by the attorney general to enjoin the corporation from the transaction of unauthorized business.

History: En. Sec. 6, Ch. 300, L. 1967; R.C.M. 1947, 15-2206; amd. Sec. 1, Ch. 202, L. 1979.

Cross-References

Dissolution and liquidation, Title 35, ch. 1, part 9.

Disabilities and liabilities of transacting business without a certificate, 35-1-1004.

Involuntary dissolution by Secretary of State, Title 35, ch. 6, part 1.

Reinstatement, Title 35, ch. 6, part 2.

35-1-111. Waiver of notice. Whenever any notice is required to be given to any shareholder or director of a corporation under the provisions of this chapter or under the provisions of the articles of incorporation or bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

History: En. Sec. 133, Ch. 300, L. 1967; R.C.M. 1947, 15-22-133.

Cross-References

Director's attendance at meeting as waiver, 35-1-404.

Part 2

Formation — Articles of Incorporation — Bylaws

Part Cross-References

Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.

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Formation of cemetery associations, Title 35, ch. 20, part 1.

Organization of mausoleum and columbarium authorities, Title 35, ch. 21, part 2.

35-1-201. Incorporators. One or more persons of legal age or a domestic or foreign corporation may act as incorporator or incorporators of a corporation by signing and delivering one original and one copy of articles of incorporation to the secretary of state.

History: En. Sec. 47, Ch. 300, L. 1967; R.C.M. 1947, 15-2247; amd. Sec. 11, Ch. 131, L. 1983; amd. Sec. 9, Ch. 174, L. 1983.

Cross-References

Adult rights, Art. II, sec. 14, Mont. Const.

Secretary of State to establish filing fees for articles of incorporation, 35-1-1202.

Special procedure for religious corporations sole, 35-3-208.

35-1-202. Articles of incorporation. (1) The articles of incorporation shall set forth:

(a) the name of the corporation;

(b) the period of duration, which may be perpetual;

(c) the purpose or purposes for which the corporation is organized, which may be stated to be or to include the transaction of any or all lawful business for which corporations may be incorporated under this chapter;

(d) the aggregate number of shares which the corporation shall have authority to issue and, if such shares are to be divided into classes, the number of shares of each class;

(e) if the shares are to be divided into classes, the designation of each class and a statement of the preferences, limitations, and relative rights in respect of the shares of each class;

(f) if the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative rights and preferences as between series insofar as the same are to be fixed in the articles of incorporation and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series;

(g) any provision granting to shareholders the preemptive right to acquire additional shares of the corporation;

(h) the address, including street and number, if any, of its initial registered office and the name of its initial registered agent at such address;

(i) the number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors be elected and qualify;

(j) the name and address of each incorporator.

(2) (a) In addition to provisions required therein, the articles of incorporation may also contain provisions not inconsistent with law regarding:

(i) the direction of the management of the business and the regulation of the affairs of the corporation;

(ii) the definition, limitation, and regulation of the powers of the corporation, the directors, and the shareholders or any class of the shareholders, including restrictions on the transfer of shares;

(iii) the par value of any authorized shares or class of shares;

(iv) any provision that, under this chapter, is required or permitted to be set forth in the bylaws;

(v) the elimination or limitation of the personal liability of a director to a corporation or its shareholders for monetary damages for breach of fiduciary duty as a director, except:

(A) for a breach of a director's duty of loyalty to a corporation or its shareholders;

(B) for acts or omissions that constitute willful misconduct, recklessness, or a knowing violation of law;

(C) under 35-1-409; or

(D) for a transaction from which a director derives an improper personal benefit.

(b) A provision under this subsection (2) may not eliminate or limit the liability of a director for an act or omission occurring before the effective date of the provision. For purposes of this subsection (2), "director" includes a member of a governing body of a corporation that is not authorized to issue capital stock.

(3) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

History: En. Sec. 48, Ch. 300, L. 1967; R.C.M. 1947, 15-2248; amd. Sec. 6, Ch. 475, L. 1981; amd. Sec. 1, Ch. 559, L. 1987.

35-1-203. Articles of incorporation — filing — issuance of certificate of incorporation. (1) One original and one copy of the articles of incorporation shall be delivered to the secretary of state. If the secretary of state finds that the articles of incorporation conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(b) file the original in his office; and

(c) issue a certificate of incorporation to which he shall affix the copy.

(2) The certificate of incorporation, together with the copy of the articles of incorporation affixed thereto by the secretary of state, shall be returned to the incorporators or their representative.

History: En. Sec. 49, Ch. 300, L. 1967; R.C.M. 1947, 15-2249; amd. Sec. 12, Ch. 131, L. 1983.

Cross-References

Filing articles of dissolution, 35-1-901.

Filing fees, 35-1-1202.

Articles of incorporation — contents — filing — articles or copies as prima facie evidence, 35-17-202.

Amendments to articles, 35-17-203.

35-1-204. Effect of issuance of certificate of incorporation. Upon the issuance of the certificate of incorporation, the corporate existence shall begin and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this chapter, except as against this state in a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the corporation.

History: En. Sec. 50, Ch. 300, L. 1967; R.C.M. 1947, 15-2250.

35-1-205. Organization meeting of directors. After the issuance of the certificate of incorporation, an organization meeting of the board of directors named in the articles of incorporation shall be held, either within or without this state, at the call of a majority of the incorporators for the purpose of adopting bylaws, electing officers, and the transaction of such other business as may come before the meeting. The incorporators calling the meeting shall give at least 3 days' notice thereof by mail to each director so named, which notice shall state the time and place of the meeting.

History: En. Sec. 51, Ch. 300, L. 1967; R.C.M. 1947, 15-2251.

35-1-206. Power to amend articles of incorporation. (1) A corporation may amend its articles of incorporation from time to time in any and as many respects as may be desired so long as its articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making such amendment and if a change in shares or the rights of shareholders or an exchange, reclassification, or cancellation of shares or rights of shareholders is to be made, such provisions as may be necessary to effect such change, exchange, reclassification, or cancellation.

(2) In particular and without limitation upon such general power of amendment, a corporation may amend its articles of incorporation from time to time so as to:

(a) change its corporate name;

(b) change its period of duration;

(c) change, enlarge, or diminish its corporate purposes;

(d) increase or decrease the aggregate number of shares or shares of any class which the corporation has authority to issue;

(e) provide, change, or eliminate any provision with respect to the par value of any shares or class of shares;

(f) exchange, classify, reclassify, or cancel all or any part of its shares, whether issued or unissued;

(g) change the designation of all or any part of its shares, whether issued or unissued, and to change the preferences, limitations, and the relative rights in respect of all or any part of its shares, whether issued or unissued;

(h) change the shares of any class, whether issued or unissued, into a different number of shares of the same class or into the same or a different number of shares of other classes;

(i) create new classes of shares having rights and preferences either prior and superior or subordinate and inferior to the shares of any class then authorized, whether issued or unissued;

(j) cancel or otherwise affect the right of the holders of the shares of any class to receive dividends which have accrued but have not been declared;

(k) divide any preferred or special class of shares, whether issued or unissued, into series and fix and determine the designations of such series and the variations in the relative rights and preferences as between the shares of such series;

(l) authorize the board of directors to establish, out of authorized but unissued shares, series of any preferred or special class of shares and fix and determine the relative rights and preferences of the shares of any series so established;

(m) authorize the board of directors to fix and determine the relative rights and preferences of the authorized but unissued shares of series theretofore established in respect of which either the relative rights and preferences have not been fixed and determined or the relative rights and preferences theretofore fixed and determined are to be changed;

(n) revoke, diminish, or enlarge the authority of the board of directors to establish series out of authorized but unissued shares of any preferred or special class and fix and determine the relative rights and preferences of the shares of any series so established;

(o) grant to shareholders of any class the preemptive right to acquire additional shares of the corporation, whether then or thereafter authorized.

History: En. Sec. 52, Ch. 300, L. 1967; R.C.M. 1947, 15-2252; amd. Sec. 7, Ch. 475, L. 1981.

Cross-References

Shareholders' preemptive rights, 35-1-511.

License fees based on number of shares in articles, 35-1-1204.

35-1-207. Procedure to amend articles of incorporation. (1) Amendments to the articles of incorporation shall be made in the following manner:

(a) If shares have been issued, the board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting. If no shares have been issued, the amendment shall be adopted by resolution of the board of directors and the provisions for adoption by shareholders shall not apply. If the corporation has only one class of shares outstanding, an amendment solely to change the number of authorized shares to effectuate a split of or stock dividend in the corporation's own shares or solely to do so and to change the number of authorized shares in proportion thereto may be adopted by the board of directors and the provisions for adoption by shareholders do not apply unless otherwise provided by the articles of incorporation. The resolution may incorporate the proposed amendment in restated articles of incorporation that contain a statement that, except for the designated amendment, the restated articles of incorporation correctly set forth without change the corresponding provisions of the articles of incorporation as theretofore amended and that the restated articles of incorporation, together with the designated amendment, supersede the original articles of incorporation and all amendments thereto.

(b) Written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders. If the meeting be an annual meeting, the proposed amendment or such summary may be included in the notice of such annual meeting.

(c) At such meeting a vote of the shareholders entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the proposed amendment shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon.

(2) Any number of amendments may be submitted to the shareholders and voted upon by them at one meeting.

History: En. Sec. 53, Ch. 300, L. 1967; R.C.M. 1947, 15-2253; amd. Sec. 8, Ch. 475, L. 1981.

Cross-References

Appeal from failure of approval of amended articles, 35-1-1304.

35-1-208. Class voting on amendments. The holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles of incorporation, if the amendment would:

(1) increase or decrease the aggregate number of authorized shares of such class;

(2) effect an exchange, reclassification, or cancellation of all or part of the shares of such class;

(3) effect an exchange or create a right of exchange of all or any part of the shares of another class into the shares of such class;

(4) change the designations, preferences, limitations, or relative rights of the shares of such class. If any proposed amendment would change the designations, preferences, or relative rights of the shares of any series of such class but would not affect all of the shares of such class, then only the shares of the series so affected by the amendment may be considered a separate class for the purpose of this section.

(5) change the shares of such class into the same or a different number of shares of the same class or another class or classes;

(6) create a new class of shares having rights and preferences prior and superior to the shares of such class or increase the rights and preferences or the number of authorized shares of any class having rights and preferences prior or superior to the shares of such class;

(7) in the case of a preferred or special class of shares, divide the shares of such class into series and fix and determine the designation of such series and the variations in the relative rights and preferences between the shares of such series or authorize the board of directors to do so;

(8) limit or deny existing preemptive rights of the shares of such class;

(9) cancel or otherwise affect dividends on the shares of such class which have accrued but have not been declared.

History: En. Sec. 54, Ch. 300, L. 1967; R.C.M. 1947, 15-2254; amd. Sec. 9, Ch. 475, L. 1981.

Cross-References

Voting of shares, 35-1-506, 35-1-507.
Voting on merger or consolidation, 35-1-803.
Voting on sale of assets, 35-1-809.
Voting on voluntary dissolution, 35-1-903.

35-1-209. Articles of amendment — contents. The articles of amendment shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary and shall set forth:

(1) the name of the corporation;

(2) the amendments so adopted;

(3) the date of the adoption of the amendment by the shareholders or the board of directors when no shares have been issued;

(4) the number of shares outstanding and the number of shares entitled to vote thereon and, if the shares of any class are entitled to vote thereon as a class, the designation and number of outstanding shares entitled to vote thereon of each such class;

(5) the number of shares voted for and against such amendments, respectively, and, if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against such amendment, respectively, or, if no shares have been issued, a statement to that effect; and

(6) if such amendment provides for an exchange, reclassification, or cancellation of issued shares and if the manner in which the same shall be effected is not set forth in the amendment, then a statement of the manner in which the same shall be effected.

History: En. Sec. 55, Ch. 300, L. 1967; R.C.M. 1947, 15-2255; amd. Sec. 10, Ch. 475, L. 1981; amd. Sec. 13, Ch. 131, L. 1983; amd. Sec. 10, Ch. 174, L. 1983.

Cross-References

Amendment filing fees, 35-1-1202.

License fees based on number of shares in articles, 35-1-1204.

Appeal from failure of approval of amended articles, 35-1-1304.

35-1-210. Filing of articles of amendment and issuance of certificate of amendment. (1) One original and one copy of the articles of amendment shall be delivered to the secretary of state. If the secretary of state finds that the articles of amendment conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(b) file the original in his office; and

(c) issue a certificate of amendment to which he shall affix the copy.

(2) The certificate of amendment, together with the copy of the articles of amendment affixed thereto by the secretary of state, shall be returned to the corporation or its representative.

History: En. Sec. 56, Ch. 300, L. 1967; R.C.M. 1947, 15-2256; amd. Sec. 14, Ch. 131, L. 1983.

Cross-References

Foreign corporation amendment procedure, 35-1-1015.

Filing fee, 35-1-1202.

Appeal on failure of approval of amended articles, 35-1-1304.

Effect of issuance of certificate, 35-2-209.

Filing of amended articles of incorporation — foreign corporations, 35-2-814.

Special procedure for religious corporations sole, 35-3-206.

35-1-211. Effect of certificate of amendment. (1) An amendment becomes effective upon the issuance of the certificate of amendment by the secretary of state or on such later date, not more than 30 days subsequent to the filing thereof with the secretary of state, as shall be provided for in the articles of amendment.

(2) No amendment shall affect any existing cause of action in favor of or against such corporation or any pending suit to which such corporation shall be a party or the existing rights of persons other than shareholders. In the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate for that reason.

History: En. Sec. 57, Ch. 300, L. 1967; R.C.M. 1947, 15-2257; amd. Sec. 11, Ch. 475, L. 1981.

35-1-212. Amendment of articles of incorporation in reorganization proceedings. (1) Whenever a plan of reorganization of a corporation has been confirmed by decree or order of a court of competent jurisdiction in proceedings for the reorganization of such corporation pursuant to the provisions of any applicable statute of the United States relating to reorganizations of corporations, the articles of incorporation of the corporation may be amended in the manner provided in this section in as many respects as may be necessary to carry out the plan and put it into effect, so long as the articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making such amendment.

(2) In particular and without limitation upon such general power of amendment, the articles of incorporation may be amended for such purpose so as to:

(a) change the corporate name, period of duration, or corporate purposes of the corporation;

(b) repeal, alter, or amend the bylaws of the corporation;

(c) change the aggregate number of shares or shares of any class which the corporation has authority to issue;

(d) change the preferences, limitations, and relative rights in respect of all or any part of the shares of the corporation and classify, reclassify, or cancel all or any part thereof, whether issued or unissued;

(e) authorize the issuance of bonds, debentures, or other obligations of the corporation, whether or not convertible into shares of any class or bearing warrants or other evidences of optional rights to purchase or subscribe for shares of any class, and fix the terms and conditions thereof; and

(f) constitute or reconstitute and classify or reclassify the board of directors of the corporation and appoint directors and officers in place of or in addition to all or any of the directors or officers then in office.

(3) Amendments to the articles of incorporation pursuant to this section shall be made in the following manner:

(a) Articles of amendment approved by decree or order of such court shall be executed by such person or persons as the court shall designate or appoint for the purpose and shall set forth the name of the corporation, the amendments of the articles of incorporation approved by the court, the date of the decree or order approving the articles of amendment, the title of the proceedings in which the decree or order was entered, and a statement that such decree or order was entered by a court having jurisdiction of the proceedings for the reorganization of the corporation pursuant to the provisions of an applicable statute of the United States.

(b) One original and one copy of the articles of amendment shall be delivered to the secretary of state. If the secretary of state finds that the articles of amendment conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(i) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(ii) file the original in his office; and

(iii) issue a certificate of amendment to which he shall affix the copy.

(c) The certificate of amendment, together with the copy of the articles of amendment affixed thereto by the secretary of state, shall be returned to the corporation or its representative.

(4) The amendment becomes effective upon the issuance of the certificate of amendment by the secretary of state or on such later date, not more than 30 days subsequent to the filing thereof with the secretary of state, as may be provided for in the articles of amendment, without any action thereon by the directors or shareholders of the corporation and with the same effect as if the amendments had been adopted by unanimous action of the directors and shareholders of the corporation.

History: En. Sec. 59, Ch. 300, L. 1967; R.C.M. 1947, 15-2259; amd. Sec. 12, Ch. 475, L. 1981; amd. Sec. 15, Ch. 131, L. 1983; amd. Sec. 11, Ch. 174, L. 1983.

35-1-213. Restated articles of incorporation. (1) A corporation may, by action taken in the same manner as required for amendment of articles of incorporation, adopt restated articles of incorporation. The restated articles of incorporation may contain any changes in the articles of incorporation that could be made by amendment regularly adopted. Adoption of restated articles of incorporation containing any such changes shall have the effect of amending the existing articles of incorporation to conform to the restated articles of incorporation without further action of the board of directors or shareholders. Restated articles of incorporation shall contain a statement that they supersede the theretofore existing articles of incorporation and amendments thereto. Restated articles of incorporation shall contain all the statements required by this chapter to be included in original articles of incorporation except that:

(a) the restated articles of incorporation shall set forth the aggregate number of its shares, issued and unissued, itemized by class and series, if any, within each class, which the corporation has authority to issue at the time of the adoption of the restated articles of incorporation;

(b) in lieu of setting forth the address of the initial registered office and the name of the initial registered agent at such address, there shall be set forth the address, including street and number, if any, of the registered office and the name of the registered agent at such address at the time of the adoption of the restated articles of incorporation; and

(c) no statement need be made with respect to the names, number, or addresses of directors constituting the initial board of directors or the names and addresses of the incorporators.

(2) Restated articles of incorporation, when executed and filed in the manner prescribed in this chapter for articles of amendment, shall supersede the theretofore existing articles of incorporation and amendments thereto.

(3) The restated articles of incorporation when filed shall be accompanied by a statement, executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary, setting forth the following:

(a) the name of the corporation;

(b) the date of the adoption of the restated articles of incorporation by the shareholders;

(c) the number of shares outstanding and the number of shares entitled to vote thereon and, if the shares of any class are entitled to vote thereon as a class, the designation and number of outstanding shares entitled to vote thereon of each such class;

(d) the number of shares voted for and against the restated articles of incorporation, respectively, and, if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against the restated articles of incorporation, respectively;

(e) if the restated articles of incorporation provide for an exchange, reclassification, or cancellation of issued shares and, if the manner in which the same shall be effected is not set forth in the restated articles of incorporation, then a statement of the manner in which the same shall be effected.

History: En. Sec. 58, Ch. 300, L. 1967; R.C.M. 1947, 15-2258(part); amd. Sec. 13, Ch. 475, L. 1981; amd. Sec. 16, Ch. 131, L. 1983; amd. Sec. 12, Ch. 174, L. 1983; amd. Sec. 1, Ch. 456, L. 1983; amd. Sec. 1, Ch. 445, L. 1985.

Cross-References

Articles of incorporation, 35-1-202.

Filing fees, 35-1-1202.

Secretary of State to certify restated articles, 35-1-1305.

35-1-214. Bylaws — power in directors — contents. The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend, or repeal the bylaws or adopt new bylaws, subject to repeal or change by action of the shareholders, shall be vested in the board of directors unless reserved to the shareholders by the articles of incorporation. The bylaws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law or the articles of incorporation.

History: En. Sec. 25, Ch. 300, L. 1967; R.C.M. 1947, 15-2225; amd. Sec. 14, Ch. 475, L. 1981.

Part 3

Corporate Name, Registered Office and Agent, and Service of Process

Part Cross-References

Assumed business names, Title 30, ch. 13, part 2.

Exclusivity of corporate name, 30-13-202.

Foreign corporation, corporate name, 35-1-1006.

Nonprofit corporation, corporate name, 35-2-301.

Foreign nonprofit corporation, corporate name, 35-2-805, 35-2-806.

Business trust name, 35-5-201.

Acquisition of new name by dissolved corporation upon reinstatement, 35-6-203.

Rural cooperative utility names, 35-18-201.

35-1-301. Corporate name. (1) The corporate name:

(a) shall contain the word "corporation", "company", "incorporated", or "limited" or shall contain an abbreviation of one of such words, unless one of such words or an abbreviation thereof is added at the end of the corporate name;

(b) shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation;

(c) shall not be the same as or deceptively similar to any assumed business name, limited partnership name, trademark, or service mark registered or reserved with the secretary of state or to the name of any domestic corporation existing under the laws of this state, any foreign corporation authorized to transact business in this state, or a name the exclusive right to which is, at the time, reserved in the manner provided in this chapter or the name of a corporation which has in effect a registration of its corporate name as provided in this chapter, except that this provision does not apply if the applicant files with the secretary of state either of the following:

(i) the written consent of such other corporation or holder of a reserved or registered name to use the name or a deceptively similar name with one or more words added to make such name distinguishable from such other name; or

(ii) a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of such name in this state.

(2) A corporation with which another corporation, domestic or foreign, is merged or that is formed by the reorganization or consolidation of one or

more domestic or foreign corporations or upon a sale, lease, or other disposition to or exchange with a domestic corporation of all or substantially all the assets of another corporation, domestic or foreign, including its name, may have the same name as that used in this state by any of such corporations if such other corporation was organized under the laws of or is authorized to transact business in this state.

History: **En. Sec. 7, Ch. 300, L. 1967; R.C.M. 1947, 15-2207; amd. Sec. 15, Ch. 475, L. 1981; amd. Sec. 2, Ch. 456, L. 1983.**

Cross-References

Exclusivity of assumed business names, 30-13-202.

Trade and service marks, Title 30, ch. 13, part 3.

Name of foreign corporation, 35-1-1006, 35-2-805.

Nonprofit corporate names, 35-2-301.

Acquisition of new name on reinstatement, 35-6-203.

Limited partnership name, 35-12-505.

Rural cooperative utility names, 35-18-201.

35-1-302. Reservation of corporate name. (1) The exclusive right to the use of a corporate name may be reserved by:

(a) any person intending to organize a corporation under this chapter;

(b) any domestic corporation intending to change its name;

(c) any foreign corporation intending to make application for a certificate of authority to transact business in this state;

(d) any foreign corporation authorized to transact business in this state and intending to change its name;

(e) any person intending to organize a foreign corporation and intending to have such corporation make application for a certificate of authority to transact business in this state.

(2) The reservation shall be made by filing with the secretary of state an application, executed by the applicant, to reserve a specified corporate name. If the secretary of state finds that the name is available for corporate use, he shall reserve the same for the exclusive use of the applicant for a period of 120 days.

(3) The right to the exclusive use of a specified corporate name so reserved may be transferred to any other person or corporation by filing in the office of the secretary of state a notice of such transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee.

History: **En. Sec. 8, Ch. 300, L. 1967; R.C.M. 1947, 15-2208.**

Cross-References

Reservation of proposed assumed business name, 30-13-211.

35-1-303. Registration of corporate name. (1) Any corporation organized and existing under the laws of any state or territory of the United States may register its corporate name under this chapter, provided its corporate name is not the same as or deceptively similar to any assumed business name, limited partnership name, trademark, or service mark registered or reserved with the secretary of state or to the name of any domestic corporation existing under the laws of this state, the name of any foreign corporation authorized to transact business in this state, or any corporate name reserved or registered under this chapter.

(2) The name must contain the word "corporation", "company", "incorporated", or "limited" or an abbreviation of one of such words, or such corporation shall, for use in this state, add at the end of its name one of such words or an abbreviation thereof.

(3) Such registration shall be made by:

(a) filing with the secretary of state:

(i) an application for registration, executed by the corporation by an officer thereof, setting forth the name of the corporation, the state or territory under the laws of which it is incorporated, the date of its incorporation, a statement that it is carrying on or doing business, and a brief statement of the business in which it is engaged; and

(ii) a certificate setting forth that such corporation is in good standing under the laws of the state or territory wherein it is organized, executed by the secretary of state of such state or territory or by such other official as may have custody of the records pertaining to corporations;

(b) paying to the secretary of state the required fee.

(4) Such registration shall be effective until the close of the calendar year in which the application for registration is filed.

History: En. Sec. 9, Ch. 300, L. 1967; R.C.M. 1947, 15-2209; amd. Sec. 3, Ch. 456, L. 1983; amd. Sec. 2, Ch. 445, L. 1985.

Cross-References

Registration of assumed business name — when prohibited, 30-13-202.

Filing fees, 35-1-1202.

35-1-304. Renewal of name registration.

A corporation which has in effect a registration of its corporate name may renew such registration from year to year by annually filing an application for renewal setting forth the facts required to be set forth in an original application for registration and a certificate of good standing as required for the original registration and by paying the required filing fee. A renewal application may be filed between October 1 and December 31 in each year and shall extend the registration for the following calendar year.

History: En. Sec. 10, Ch. 300, L. 1967; R.C.M. 1947, 15-2210; amd. Sec. 3, Ch. 445, L. 1985.

Cross-References

Term and renewal of assumed business name registration, 30-13-206.

Filing fees, 35-1-1202.

35-1-305. Registered office and registered agent.

Each corporation shall have and continuously maintain in this state:

(1) a registered office which may be but need not be the same as its place of business;

(2) a registered agent, which agent may be either an individual resident in this state whose business office is identical with such registered office or a domestic corporation or a foreign corporation authorized to transact business in this state having a business office identical with such registered office.

History: En. Sec. 11, Ch. 300, L. 1967; R.C.M. 1947, 15-2211.

Cross-References

Agency, Title 28, ch. 10.

Agent to be named in articles of incorporation, 35-1-202.

Registered office and registered agent of foreign corporation, 35-1-1012.

35-1-306. Change of registered office or registered agent.

(1) A corporation may change its registered office or change its registered agent, or

both, upon filing in the office of the secretary of state a statement setting forth:

(a) the name of the corporation;

(b) the address of its then registered office;

(c) if the address of its registered office is changed, the address to which the registered office is to be changed;

(d) the name of its then registered agent;

(e) if its registered agent is changed, the name of its successor registered agent;

(f) that the address of its registered office and the address of the business office of its registered agent, as changed, will be identical; and

(g) that such change was authorized by resolution duly adopted by its board of directors.

(2) Such statement shall be executed for the corporation by any officer and delivered to the secretary of state. If the secretary of state finds that such statement conforms to the provisions of this chapter, he shall, when all fees have been paid as in this chapter prescribed, file such statement in his office. Upon filing, the change of address of the registered office or the appointment of a new registered agent, or both, as the case may be, is effective.

(3) A registered agent of a corporation may resign as registered agent upon executing a written notice of resignation and filing one original and one copy with the secretary of state, who shall immediately mail a copy thereof to the corporation at its registered office. The appointment of the agent shall terminate 30 days after receipt of such notice by the secretary of state.

(4) If a registered agent changes his or its business address to another place within the same county, he or it may change such address and the address of the registered office of any corporations of which he or it is registered agent by filing a statement as required above, except that it need be signed only by the registered agent and need not be responsive to (1)(e) or (1)(g) and must recite that a copy of the statement has been mailed to each such corporation.

History: En. Sec. 12, Ch. 300, L. 1967; amd. Sec. 10, Ch. 62, L. 1977; R.C.M. 1947, 15-2212; amd. Sec. 17, Ch. 131, L. 1983; amd. Sec. 13, Ch. 174, L. 1983.

Cross-References

Business corporation law — applicability, 35-1-103.

Foreign corporations, 35-1-1013, 35-2-812.

Filing fees, 35-1-1202.

Nonprofit corporations, 35-2-303.

Failure to appoint and maintain registered agent — dissolution, 35-6-102.

35-1-307. Service of process upon corporation. Service of process upon a corporation shall be effected upon the persons and in the manner provided by the Montana Rules of Civil Procedure.

History: En. Sec. 13, Ch. 300, L. 1967; R.C.M. 1947, 15-2213.

Cross-References

Personal service on corporation, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Service of process on foreign corporation, 35-1-1014.

Part 4

Directors and Officers

Part Cross-References

Directors and officers of nonprofit corporations, Title 35, ch. 2, part 4.

Montana Close Corporation Act, Title 35, ch. 9.

Elimination of Board of Directors, 35-9-302.

Shareholders, directors, and officers of cooperative associations, Title 35, ch. 15, part 3.

Members and directors of agricultural associations, Title 35, ch. 16, part 3.

Members, directors, and officers of cooperative agricultural marketing associations, Title 35, ch. 17, part 3.

Members, trustees, and officers of rural cooperative utilities, Title 35, ch. 18, part 3.

Trustees of cemetery associations, Title 35, ch. 20, part 2.

Governing board of mausoleum and columbarium associations, 35-21-205.

35-1-401. Board of directors. (1) All corporate powers shall be exercised by or under authority of and the business and affairs of a corporation shall be managed under the direction of a board of directors except as may be otherwise provided in this chapter or the articles of incorporation. If any such provision is made in the articles of incorporation, the powers and duties conferred or imposed upon the board of directors by this chapter shall be exercised or performed to such extent and by such person or persons as shall be provided in the articles of incorporation. Directors need not be residents of this state or shareholders of the corporation unless the articles of incorporation or bylaws so require. The articles of incorporation or bylaws may prescribe other qualifications for directors. The board of directors shall have authority to fix the compensation of directors unless otherwise provided in the articles of incorporation.

(2) A director shall perform his duties as a director, including his duties as a member of any committee of the board upon which he may serve, in good faith, in a manner he reasonably believes to be in the best interests of the corporation, and with such care as an ordinarily prudent person in a like position would use under similar circumstances.

(3) (a) In performing his duties, a director is entitled to rely on information, opinions, reports, or statements, including financial statements or other financial data, in each case prepared or presented by:

(i) one or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(ii) counsel, public accountants, or other persons as to matters that the director reasonably believes to be within such person's professional or expert competence; or

(iii) a committee of the board upon which he does not serve, duly designated in accordance with a provision of the articles of incorporation or the bylaws, as to matters within its designated authority, which committee the director reasonably believes to merit confidence.

(b) A director may not be considered to be acting in good faith if he has knowledge concerning the matter in question that would cause such reliance to be unwarranted.

(c) A person who so performs his duties has no liability by reason of being or having been a director of the corporation.

(4) A director of a corporation who is present at a meeting of its board of directors at which action on any corporate matter is taken is presumed to have assented to the action taken unless his dissent is entered in the minutes of the meeting or unless he files his written dissent to such action with the secretary of the meeting before the adjournment thereof or forwards the dissent by registered or certified mail to the secretary of the corporation

immediately after the adjournment of the meeting. Such right to dissent does not apply to a director who voted in favor of such action.

History: **En. Sec. 33, Ch. 300, L. 1967; R.C.M. 1947, 15-2233; amd. Sec. 16, Ch. 475, L. 1981.**

Cross-References

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

35-1-402. Number, election, and term of directors. (1) The board of directors of a corporation shall consist of one or more members. The number of directors shall be fixed by or in the manner provided in the articles of incorporation or the bylaws, except as to the number constituting the initial board of directors which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to or in the manner provided in the articles of incorporation or the bylaws, but no decrease shall have the effect of shortening the term of any incumbent director. In the absence of a bylaw fixing the number of directors, the number shall be the same as that stated in the articles of incorporation.

(2) The names and addresses of the members of the first board of directors shall be stated in the articles of incorporation. Such persons shall hold office until the first annual meeting of shareholders and until their successors shall have been elected and qualified. At the first annual meeting of shareholders and at each annual meeting thereafter, the shareholders shall elect directors to hold office until the next succeeding annual meeting, except in case of the classification of directors as permitted by this chapter. Each director shall hold office for the term for which he is elected and until his successor shall have been elected and qualified.

History: **En. Sec. 34, Ch. 300, L. 1967; R.C.M. 1947, 15-2234; amd. Sec. 17, Ch. 475, L. 1981.**

35-1-403. Classification of directors and staggered terms. When the board of directors shall consist of nine or more members, in lieu of electing the whole number of directors annually, the articles of incorporation or the bylaws may provide that the directors be divided into either two or three classes, each class to be as nearly equal in number as possible, the term of office of directors of the first class to expire at the first annual meeting of shareholders after their election, that of the second class to expire at the second annual meeting after their election, and that of the third class, if any, to expire at the third annual meeting after their election. At each annual meeting after such classification, the number of directors equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the second succeeding annual meeting if there be two classes, or until the third succeeding annual meeting if there be three classes. No classification of directors shall be effective prior to the first annual meeting of shareholders.

History: **En. Sec. 35, Ch. 300, L. 1967; R.C.M. 1947, 15-2235.**

35-1-404. Place and notice of directors' meetings. (1) Meetings of the board of directors, regular or special, may be held either within or without this state.

(2) Regular meetings of the board of directors or any committee designated thereby may be held with or without notice as prescribed in the bylaws.

Special meetings of the board of directors or any committee designated thereby shall be held upon such notice as is prescribed in the bylaws. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at nor the purpose of any regular or special meeting of the board of directors or any committee designated thereby need be specified in the notice or waiver of notice of such meeting unless required by the bylaws.

(3) Except as may be otherwise restricted by the articles of incorporation or bylaws, members of the board of directors or any committee designated thereby may participate in a meeting of such board or committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time, and participation by such means constitutes presence in person at a meeting.

History: **En. Sec. 39, Ch. 300, L. 1967; R.C.M. 1947, 15-2239; amd. Sec. 18, Ch. 475, L. 1981.**

35-1-405. Quorum of directors — voting requirements. (1) A majority of the number of directors fixed by the bylaws, or in the absence of a bylaw fixing the number of directors then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business unless a greater number is required by the articles of incorporation or the bylaws.

(2) The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors unless the act of a greater number is required by the articles of incorporation or the bylaws.

History: **En. Sec. 37, Ch. 300, L. 1967; R.C.M. 1947, 15-2237.**

35-1-406. Action by directors without a meeting. (1) Unless otherwise provided by the articles of incorporation or bylaws, any action required by this chapter to be taken at a meeting of the directors of a corporation or any action which may be taken at a meeting of the directors or of a committee may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the directors or all of the members of the committee, as the case may be, entitled to vote on the subject matter thereof.

(2) Such consent shall have the same effect as a unanimous vote and may be stated in any articles or document filed with the secretary of state under this chapter.

History: **En. Sec. 134, Ch. 300, L. 1967; R.C.M. 1947, 15-22-134(part); amd. Sec. 19, Ch. 475, L. 1981.**

35-1-407. Executive and other committees. (1) If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the full board of directors, may designate from among its members an executive committee and one or more other committees each of which, to the extent provided in such resolution or in the articles of incorporation or the bylaws of the corporation, shall have and may exercise all the authority of the board of directors, except that no such committee shall have the authority to:

(a) authorize distributions;

(b) approve or recommend to shareholders actions or proposals required by this chapter to be approved by shareholders;

(c) designate candidates for the office of director, for purposes of proxy solicitation or otherwise, or fill vacancies on the board of directors or any committee thereof;

(d) amend the bylaws;

(e) approve a plan of merger not requiring shareholder approval;

(f) authorize or approve the reacquisition of shares unless pursuant to a general formula or method specified by the board of directors; or

(g) authorize or approve the issuance or sale of or any contract to issue or sell shares or designate the terms of a series of a class of shares, except that the board of directors, having acted regarding general authorization for the issuance or sale of shares or any contract therefor and, in the case of a series, the designation thereof may, pursuant to a general formula or method specified by the board by resolution or by adoption of a stock option or other plan, authorize a committee to fix the terms of any contract for the sale of the shares and to fix the terms upon which such shares may be issued or sold, including without limitation the price, the dividend rate, provisions for redemption, sinking fund, conversion, voting or preferential rights, and provisions for other features of a class of shares or a series of a class of shares, with full power in such committee to adopt any final resolution setting forth all the terms thereof and to authorize the statement of the terms of a series for filing with the secretary of state under this chapter.

(2) The designation of any such committee, the delegation thereto of authority, or the action by such committee pursuant to such authority does not alone constitute compliance by any member of the board of directors not a member of the committee in question with his responsibility to act in good faith, in a manner he reasonably believes to be in the best interests of the corporation, and with such care as an ordinarily prudent person in a like position would use under similar circumstances.

History: **En. Sec. 38, Ch. 300, L. 1967; R.C.M. 1947, 15-2238; amd. Sec. 20, Ch. 475, L. 1981.**

Cross-References

Amendment of articles or bylaws, 35-1-212, 35-1-214.

35-1-408. Vacancies and removal of directors. (1) Any vacancy occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the board of directors. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. Any directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors for a term of office continuing only until the next election of directors by the shareholders. Any directorship to be filled by reason of the removal of one or more directors by the shareholders may be filled by election by the shareholders at the meeting at which the director or directors are removed.

(2) At a meeting called expressly for that purpose, directors may be removed in the manner provided in this section. Any director or the entire

board of directors may be removed, with or without cause, by a vote of the holders of two-thirds of the shares then entitled to vote at an election of directors unless otherwise provided by the articles of incorporation or bylaws. If the corporation has fewer than 100 shareholders, the entire board of directors will be removed by a vote of a majority of the shares then entitled to vote.

(3) If less than the entire board is to be removed, no one of the directors may be removed if the votes cast against his removal would be sufficient to elect him if then cumulatively voted at an election of the entire board of directors or, if there be classes of directors, at an election of the class of directors of which he is a part.

History: En. Sec. 36, Ch. 300, L. 1967; amd. Sec. 1, Ch. 309, L. 1969; R.C.M. 1947, 15-2236; amd. Sec. 21, Ch. 475, L. 1981.

35-1-409. Liability of directors in certain cases. (1) In addition to any other liabilities, a director who votes for or assents to any distribution contrary to the provisions of this chapter or contrary to any restrictions contained in the articles of incorporation shall, unless he complies with the standard provided in this chapter for the performance of the duties of directors, be liable to the corporation, jointly and severally with all other directors so voting or assenting, for the amount or value of such distribution in excess of the amount of such distribution which could have been made without a violation of the provisions of this chapter or the restrictions in the articles of incorporation.

(2) Any director against whom a claim shall be asserted under or pursuant to this section for the making of a distribution and who shall be held liable thereon shall be entitled to contribution from the shareholders who accepted or received any such distribution, knowing such distribution to have been made in violation of this chapter, in proportion to the amounts received by them respectively.

(3) Any director against whom a claim shall be asserted under or pursuant to this section shall be entitled to contribution from any other directors who voted for or assented to the action upon which the claim is asserted and who did not comply with the standard provided in this chapter for the performance of the duties of a director.

History: En. Sec. 42, Ch. 300, L. 1967; R.C.M. 1947, 15-2242; amd. Sec. 22, Ch. 475, L. 1981.

Cross-References

Multiple defendants jointly and severally liable — right of contribution, 27-1-703.

Loans to directors, 35-1-108.

Liability of subscribers and shareholders, 35-1-510.

35-1-410. Officers — appointment — powers and duties. (1) The officers of a corporation shall consist of a president, one or more vice-presidents as may be prescribed by the bylaws, a secretary, and a treasurer, each of whom shall be elected by the board of directors at such time and in such manner as may be prescribed by the bylaws. Such other officers and assistant officers and agents as may be deemed necessary may be elected or appointed by the board of directors or chosen in such other manner as may be prescribed by the bylaws. Any two or more offices may be held by the same person, except the offices of president and secretary.

(2) All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the corporation as may be provided in the bylaws or as may be determined by resolution of the board of directors not inconsistent with the bylaws.

History: **En. Sec. 44, Ch. 300, L. 1967; R.C.M. 1947, 15-2244.**

35-1-411. Removal of officers. Any officer or agent may be removed by the board of directors whenever in its judgment the best interests of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

History: **En. Sec. 45, Ch. 300, L. 1967; R.C.M. 1947, 15-2245.**

Cross-References

Merger or consolidation of corporations, 35-1-807.

Grounds for involuntary dissolution, 35-6-102.

35-1-412. Penalty for signing false document. (1) The execution of any document required to be filed with the secretary of state under this chapter constitutes an affirmation, under the penalties of false swearing, by each person executing the document that the facts stated therein are true.

(2) The secretary of state shall provide for the printing of a warning to this effect on each form prescribed by him under this chapter.

History: **En. Sec. 126, Ch. 300, L. 1967; R.C.M. 1947, 15-22-126; amd. Sec. 14, Ch. 174, L. 1983.**

Cross-References

Penalty imposed upon officers and directors of nonprofit corporation for signing false document, 35-2-413.

False swearing, 45-7-202.

35-1-413. Director conflicts of interest. (1) No contract or other transaction between a corporation and one or more of its directors or any other corporation, firm, association, or entity in which one or more of its directors are directors or officers or are financially interested is either void or voidable because of such relationship or interest or because such director or directors are present at the meeting of the board of directors or a committee thereof which authorizes, approves, or ratifies such contract or transaction or because his or their votes are counted for such purposes if:

(a) the fact of such relationship or interest is disclosed or known to the board of directors or committee which authorizes, approves, or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting the votes or consents of such interested directors;

(b) the fact of such relationship or interest is disclosed or known to the shareholders entitled to vote and they authorize, approve, or ratify such contract or transaction by vote or written consent, in which vote or consent such interested directors may participate to the extent that they are also shareholders; or

(c) the contract or transaction is fair and reasonable to the corporation.

(2) Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or a committee thereof which authorizes, approves, or ratifies such contract or transaction.

History: **En. Sec. 23, Ch. 475, L. 1981.**

35-1-414. Indemnification of directors and officers. (1) As used in this section, the following definitions apply:

(a) "Director" means any person who is or was a director of the corporation and any person who, while a director of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, other enterprise, or employee benefit plan.

(b) "Corporation" includes any domestic or foreign predecessor entity of the corporation in a merger, consolidation, or other transaction in which the predecessor's existence ceased upon consummation of such transaction.

(c) "Expenses" include attorneys' fees.

(d) "Official capacity" means:

(i) when used with respect to a director, the office of director in the corporation; and

(ii) when used with respect to a person other than a director as contemplated in subsection (9), the elective or appointive office in the corporation held by the officer or the employment or agency relationship undertaken by the employee or agent in behalf of the corporation but in each case does not include service for any other foreign or domestic corporation or any partnership, joint venture, trust, other enterprise, or employee benefit plan.

(e) "Party" includes a person who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

(f) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative.

(2) (a) A corporation may indemnify any person made a party to any proceeding by reason of the fact that he is or was a director if:

(i) he conducted himself in good faith; and

(ii) he reasonably believed:

(A) in the case of conduct in his official capacity with the corporation, that his conduct was in its best interests; and

(B) in all other cases, that his conduct was at least not opposed to its best interests; and

(iii) in the case of any criminal proceeding, he had no reasonable cause to believe his conduct was unlawful.

(b) Indemnification may be made against judgments, penalties, fines, settlements, and reasonable expenses, actually incurred by the person in connection with the proceeding. However, if the proceeding was by or in the right of the corporation, indemnification may be made only against such reasonable expenses and shall not be made in respect to any proceeding in which the person shall have been adjudged to be liable to the corporation. The termination of any proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent may not, of itself, be determinative that the person did not meet the requisite standard of conduct set forth in this subsection.

(3) A director may not be indemnified under subsection (2) in respect to any proceeding charging improper personal benefit to him, whether or not involving action in his official capacity, in which he has been adjudged to be liable on the basis that personal benefit was improperly received by him.

(4) (a) Unless limited by the articles of incorporation:

(i) a director who has been wholly successful, on the merits or otherwise, in the defense of any proceeding referred to in subsection (2) shall be indemnified against reasonable expenses incurred by him in connection with the proceeding; and

(ii) a court of appropriate jurisdiction, upon application of a director and such notice as the court shall require, may order indemnification in the following circumstances:

(A) if it determines a director is entitled to reimbursement under subsection (4)(a)(i), the court shall order indemnification, in which case the director shall be entitled to recover the expenses of securing such reimbursement; or

(B) if it determines that the director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not he has met the standards of conduct set forth in subsection (2) or has been adjudged liable under subsection (3), the court may order such indemnification as the court considers proper, except that indemnification with respect to any proceeding by or in the right of the corporation or in which liability has been adjudged pursuant to subsection (3) shall be limited to expenses.

(b) A court of appropriate jurisdiction may be the same court in which the proceeding involving the director's liability took place.

(5) (a) No indemnification under subsection (2) may be made by the corporation unless authorized in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because he has met the standards of conduct set forth in subsection (2). Such determination shall be made:

(i) by the board of directors by a majority vote of a quorum consisting of directors not at the time parties to the proceeding; or

(ii) if such a quorum cannot be obtained, then by a majority vote of a committee of the board, duly designated to act in the matter by a majority vote of the full board, in which designation directors who are parties may participate, consisting solely of two or more directors not at the time parties to the proceeding; or

(iii) by special legal counsel selected by the board of directors or a committee thereof by vote as set forth in (a)(i) or (a)(ii) of subsection (5) or, if the requisite quorum of the full board cannot be obtained and such committee cannot be established, then by a majority vote of the full board, in which selection directors who are parties may participate; or

(iv) by the shareholders.

(b) Authorization of indemnification and determination as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination that indemnification is permissible is made by special legal counsel, authorization of indemnification and determination as to reasonableness of expenses shall be made in a manner specified in subsection (5)(a)(iii) for the selection of such counsel. Shares held by directors who are parties to the proceeding may not be voted on the subject matter under this subsection.

(6) Reasonable expenses incurred by a director who is a party to a proceeding may be paid or reimbursed by the corporation in advance of the final disposition of such proceeding upon receipt by the corporation of:

(a) a written affirmation by the director of his good faith belief that he has met the standard of conduct necessary for indemnification by the corporation as authorized in this section; and

(b) a written undertaking by or on behalf of the director to repay such amount if it is ultimately determined that he has not met such standard of conduct and after a determination that the facts then known to those making the determination would not preclude indemnification under this section. The undertaking required by this subsection shall be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make the repayment. Determinations and authorizations of payments under this subsection shall be made in the manner specified in subsection (5).

(7) No provision for the corporation to indemnify or to advance expenses to a director who is made a party to a proceeding, whether contained in the articles of incorporation, the bylaws, a resolution of shareholders or directors, an agreement, or otherwise, except as contemplated by subsection (10), is valid unless consistent with this section or, to the extent that indemnity hereunder is limited by the articles of incorporation, consistent therewith. Nothing contained in this section limits the corporation's ability to pay or reimburse expenses incurred by a director in connection with his appearance as a witness in a proceeding at a time when he has not been made a named defendant or respondent in the proceeding.

(8) For purposes of this section, the corporation shall be considered to have requested a director to serve an employee benefit plan where the performance by him of his duties to the corporation also imposes duties on or otherwise involves services by him to the plan or participants or beneficiaries of the plan. Excise taxes assessed on a director with respect to an employee benefit plan pursuant to applicable law shall be considered fines. Action taken or omitted by him with respect to an employee benefit plan in the performance of his duties for a purpose reasonably believed by him to be in the interest of the participants and beneficiaries of the plan shall be considered to be for a purpose that is not opposed to the best interests of the corporation.

(9) Unless otherwise limited by the articles of incorporation:

(a) an officer of the corporation shall be indemnified as and to the extent provided in subsection (4) for a director and shall be entitled to seek indemnification pursuant to the provisions of subsection (4) to the same extent as a director;

(b) a corporation has the power to indemnify and to advance expenses to an officer, employee, or agent of the corporation to the same extent that it may indemnify and advance expenses to a director pursuant to this section; and

(c) a corporation, in addition, has the power to indemnify and to advance expenses to an officer, employee, or agent who is not a director to such further extent, consistent with law, as may be provided by its articles of incorporation, bylaws, general or specific action of its board of directors, or contract.

(10) A corporation has the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the corporation or who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, other enterprise, or of an

employee benefit plan, against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the corporation would have the power to indemnify him against such liability under the provisions of this section.

(11) Any indemnification of or advance of expenses to a director in accordance with this section, if arising out of a proceeding by or in the right of the corporation, shall be reported in writing to the shareholders with the notice of the next shareholders' meeting or before.

History: **En. Sec. 4, Ch. 475, L. 1981.**

Cross-References

Indemnity, Title 28, ch. 11, part 3.

35-1-415. Loans to employees and directors. A corporation may not lend money to or use its credit to assist its directors without authorization in the particular case by its shareholders but may lend money to and use its credit to assist any officer or employee of the corporation or of a subsidiary, including any such officer or employee who is a director of the corporation, if the board of directors decides that such loan or assistance may benefit the corporation.

History: **En. Sec. 5, Ch. 475, L. 1981.**

Cross-References

Loans to employees and directors of nonprofit corporation, 35-2-107(6).

Loans to employees and officers of religious corporation, 35-3-205(6).

Part 5

Shareholders

35-1-501. Meetings of shareholders. (1) Meetings of shareholders may be held at such place, either within or without this state, as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held at the registered office of the corporation.

(2) An annual meeting of the shareholders shall be held at such time as may be provided in the bylaws. If the annual meeting is not held within any 18-month period, the district court with jurisdiction for the location of the corporation's registered office or principal place of business may, on application of any shareholder, summarily order a meeting to be held. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation.

(3) Special meetings of the shareholders may be called by the president, the board of directors, the holders of not less than one-tenth of all the shares entitled to vote at the meeting, or such other officers or persons as may be provided in the articles of incorporation or the bylaws.

History: **En. Sec. 26, Ch. 300, L. 1967; amd. Sec. 1, Ch. 308, L. 1969; R.C.M. 1947, 15-2226; amd. Sec. 24, Ch. 475, L. 1981.**

35-1-502. Notice of shareholders' meetings. Written notice stating the place, day, and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than 10 or more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the president, the secretary, or the officer or persons calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the shareholder at his address as it appears on the stock transfer books of the corporation, with postage thereon prepaid.

History: **En. Sec. 27, Ch. 300, L. 1967; R.C.M. 1947, 15-2227.**

35-1-503. Closing of transfer books and fixing record date. (1) For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof or entitled to receive payment of any dividend or in order to make a determination of shareholders for any other proper purpose, the board of directors of a corporation may provide that the stock transfer books shall be closed for a stated period but not to exceed, in any case, 50 days.

(2) If the stock transfer books shall be closed for the purpose of determining shareholders entitled to notice of or to vote at a meeting of shareholders, such books shall be closed for at least 10 days immediately preceding such meeting.

(3) In lieu of closing the stock transfer books, the bylaws or, in the absence of an applicable bylaw, the board of directors may fix in advance a date as the record date for any such determination of shareholders, such date in any case to be not more than 50 days and, in case of a meeting of shareholders, not less than 10 days prior to the date on which the particular action requiring such determination of shareholders is to be taken.

(4) If the stock transfer books are not closed and no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders or shareholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the board of directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of shareholders.

(5) When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, such determination shall apply to any adjournment thereof.

History: **En. Sec. 28, Ch. 300, L. 1967; R.C.M. 1947, 15-2228.**

35-1-504. Voting list. (1) The officer or agent having charge of the stock transfer books for shares of a corporation shall make a complete list of the shareholders entitled to vote at such meeting or any adjournment thereof, arranged in alphabetical order with the address of and the number of shares held by each. Such list shall be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting for the purposes thereof.

(2) Failure to comply with the requirements of this section shall not affect the validity of any action taken at such meeting.

(3) An officer or agent having charge of the stock transfer books who shall fail to prepare the list of shareholders or produce and keep it open for inspection at the meeting, as provided in this section, shall be liable to any shareholder suffering damage on account of such failure to the extent of such damage.

History: **En. Sec. 29, Ch. 300, L. 1967; R.C.M. 1947, 15-2229.**

35-1-505. Quorum of shareholders — voting requirements. (1) Unless otherwise provided in the articles of incorporation, a majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders, but in no event shall a quorum consist of less than one-third of the shares entitled to vote at the meeting. The shareholders present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough shareholders to leave less than a quorum.

(2) If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the shareholders unless the vote of a greater number or voting by classes is required by this chapter or the articles of incorporation or bylaws.

(3) If a meeting cannot be organized because a quorum has not attended, those present may adjourn the meeting from time to time until a quorum is present, when any business may be transacted that may have been transacted at the meeting as originally called.

(4) Whenever any portion of the capital stock of a corporation is held by the corporation by purchase, a majority of the remaining shares is a majority of the stock for all purposes of election or voting on any question at a stockholders' meeting.

History: (1) thru (3)En. Sec. 30, Ch. 300, L. 1967; Sec. 15-2230, R.C.M. 1947; (4)En. Sec. 136, Ch. 300, L. 1967; Sec. 15-22-136, R.C.M. 1947; R.C.M. 1947, 15-2230, 15-22-136(part).

35-1-506. Voting of shares — proxies. (1) Each outstanding share, regardless of class, shall be entitled to one vote, and each fractional share shall be entitled to a corresponding fractional vote on each matter submitted to a vote at a meeting of shareholders, except to the extent that the voting rights of the shares of any class or classes are limited or denied by the articles of incorporation as permitted by this chapter.

(2) Neither shares of its own stock held by the corporation in a fiduciary capacity nor shares held by another corporation if a majority of the shares entitled to vote for the election of directors of such other corporation is held by the corporation shall be voted at any meeting or counted in determining the total number of outstanding shares at any given time.

(3) (a) A shareholder may vote either in person or by proxy executed in writing by the shareholder or by his duly authorized attorney-in-fact.

(b) No proxy shall be valid after 11 months from the date of its execution unless otherwise provided in the proxy. Every proxy is revocable at the pleasure of the shareholder executing it, except as otherwise provided in this section.

(c) The authority of the holder of a proxy to act may not be revoked by the incompetence or death of the shareholder who executed the proxy unless, before the authority is exercised, written notice of an adjudication of such incompetence or of such death is received by the corporate officer responsible for maintaining the list of shareholders.

(d) Except when another provision has been made by written agreement between the parties, the record holder of shares, which he holds as pledgee or otherwise as security or which belong to another, shall issue a proxy to vote or take other action thereon to the pledgor or to such owner of such shares, upon demand therefor and payment of necessary expenses thereof.

(e) A shareholder may not sell his vote or issue a proxy to vote to any person for any sum of money or anything of value, except as authorized in this section and 35-1-508.

(f) A proxy that is entitled "irrevocable proxy" and that states that it is irrevocable is irrevocable when it is held by any of the following or a nominee of any of the following:

(i) a pledgee;

(ii) a person who has purchased or agreed to purchase the shares;

(iii) a creditor or creditors of the corporation who extend or continue credit to the corporation in consideration of the proxy if the proxy states that it was given in consideration of such extension or continuation of credit, the amount thereof, and the name of the person extending or continuing credit;

(iv) a person who has contracted to perform services as an officer of the corporation, if:

(A) a proxy is required by the contract of employment; and

(B) the proxy states that it was given in consideration of such contract of employment, the name of the employee, and the period of employment contracted for; or

(v) a person designated by or under an agreement under 35-1-508(3).

(g) Notwithstanding a provision in a proxy stating that it is irrevocable, the proxy becomes revocable after the pledge is redeemed, the debt of the corporation is paid, the period of employment provided for in the contract of employment has terminated, or the agreement under 35-1-508(3) has terminated; and in a case provided for in (iii) or (iv) of subsection (3)(f), it becomes revocable 5 years after the date of the proxy or at the end of the period, if any, specified therein, whichever period is less, unless the period of irrevocability is renewed from time to time by the execution of a new irrevocable proxy as provided in this section. This subsection does not affect the duration of a revocable proxy under subsection (3)(b).

(h) A proxy may be revoked, notwithstanding a provision making it irrevocable, by a purchaser of shares without knowledge of the existence of the provision unless the existence of the proxy and its irrevocability are noted conspicuously on the certificate representing such shares.

(4) At each election for directors every shareholder entitled to vote at such election shall have the right to vote, in person or by proxy, the number of shares owned by him for as many persons as there are directors to be elected and for whose election he has a right to vote or to cumulate his votes by giving one candidate as many votes as the number of such directors multiplied by the number of his shares shall equal or by distributing such votes on the same principle among any number of such candidates.

(5) Shares standing in the name of another corporation, domestic or foreign, may be voted by such officer, agent, or proxy as the bylaws of such corporation may prescribe or, in the absence of such provision, as the board of directors of such corporation may determine.

(6) Shares held by an administrator, executor, guardian or conservator may be voted by him, either in person or by proxy, without a transfer of such shares into his name.

(7) Shares standing in the name of a trustee may be voted by him, either in person or by proxy, but no trustee shall be entitled to vote shares held by him without a transfer of such shares into his name.

(8) Shares standing in the name of a receiver may be voted by such receiver, and shares held by or under the control of a receiver may be voted by such receiver without the transfer thereof into his name if authority so to do be contained in an appropriate order of the court by which such receiver was appointed.

(9) A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

(10) On and after the date on which written notice of redemption of redeemable shares has been mailed to the holders thereof and a sum sufficient to redeem such shares has been deposited with a bank or trust company with irrevocable instruction and authority to pay the redemption price to the holders thereof upon surrender of certificates therefor, such shares shall not be entitled to vote on any matter and shall not be deemed to be outstanding shares.

History: En. Sec. 31, Ch. 300, L. 1967; R.C.M. 1947, 15-2231; amd. Sec. 25, Ch. 475, L. 1981.

Cross-References

Election of directors of railroad corporation, 69-14-501.

Uniform Transfers to Minors Act — powers of custodian, 72-26-701.

35-1-507. Articles to control as to shareholder voting requirements. Whenever with respect to any action to be taken by the shareholders of a corporation the articles of incorporation require the vote or concurrence of the holders of a greater proportion of the shares or of any class or series thereof than required by this chapter with respect to such action, the provisions of the articles of incorporation shall control.

History: En. Sec. 132, Ch. 300, L. 1967; R.C.M. 1947, 15-22-132.

Cross-References

Class voting on amendments, 35-1-208.

Merger or consolidation approval, 35-1-803.

Sale of assets — approval, 35-1-809.

Voluntary dissolution, 35-1-903.

35-1-508. Voting trusts and agreements among shareholders. (1) Any number of shareholders of a corporation may create a voting trust for the purpose of conferring upon a trustee or trustees the right to vote or otherwise represent their shares, for a period of not to exceed 10 years, by entering into a written voting trust agreement specifying the terms and conditions of the voting trust, by depositing a counterpart of the agreement with the corporation at its registered office, and by transferring their shares to such trustee or trustees for the purposes of the agreement. Such trustee or trustees shall keep a record of the holders of voting trust certificates evidencing a beneficial interest in the voting trust, giving the names and addresses of all such holders and the number and class of the shares for which the voting trust certificates held by each are issued, and such trustee or trustees shall deposit a copy of such record with the corporation at its registered office.

(2) The counterpart of the voting trust agreement and the copy of such record so deposited with the corporation shall be subject to the same right of examination by a shareholder of the corporation, in person or by agent or attorney, as are the books and records of the corporation, and such counterpart and such copy of such record shall be subject to examination by any holder of record of voting trust certificates, either in person or by agent or attorney, at any reasonable time for any proper purpose.

(3) Agreements among shareholders regarding the voting of their shares are valid and enforceable in accordance with the terms of the agreements. Such agreements are not subject to the provisions of this section regarding voting trusts.

History: En. Sec. 32, Ch. 300, L. 1967; R.C.M. 1947, 15-2232; amd. Sec. 26, Ch. 475, L. 1981.

35-1-509. Action by shareholders without a meeting. (1) Any action required by this chapter to be taken at a meeting of the shareholders of a corporation or any action which may be taken at a meeting of the shareholders may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the shareholders entitled to vote with respect to the subject matter thereof.

(2) Such consent shall have the same effect as a unanimous vote of shareholders and may be stated as such in any articles or document filed with the secretary of state under this chapter.

History: En. Sec. 134, Ch. 300, L. 1967; R.C.M. 1947, 15-22-134(part); amd. Sec. 27, Ch. 475, L. 1981.

35-1-510. Liability of subscribers and shareholders. (1) A holder of or subscriber to shares of a corporation shall be under no obligation to the corporation or its creditors with respect to such shares other than the obligation to pay to the corporation the full consideration for which such shares were issued or to be issued.

(2) Any person becoming an assignee or transferee of shares or of a subscription for shares in good faith and without knowledge or notice that the full consideration therefor has not been paid shall not be personally liable to the corporation or its creditors for any unpaid portion of such consideration.

(3) An executor, administrator, conservator, guardian, trustee, assignee for the benefit of creditors, or receiver shall not be personally liable to the corporation as a holder of or subscriber to shares of a corporation but the estate and funds in his hands shall be so liable.

(4) No pledgee or other holder of shares as collateral security shall be personally liable as a shareholder.

History: En. Sec. 23, Ch. 300, L. 1967; R.C.M. 1947, 15-2223.

Cross-References

Liability of directors in certain cases, 35-1-409.

35-1-511. Shareholders' preemptive rights. The shareholders of a corporation shall have no preemptive right to acquire unissued shares of the corporation or obligations of the corporation convertible into such shares, except to the extent, if any, that such right is provided in the articles of incorporation.

History: En. Sec. 24, Ch. 300, L. 1967; R.C.M. 1947, 15-2224; amd. Sec. 28, Ch. 475, L. 1981.

35-1-512. Applicability of previous section to existing corporations. Corporations existing before December 31, 1968, whose original or amended articles of incorporation do not deny or limit to the present or future shareholders of any or all classes of stock any preemptive or preferential right to subscribe to any or all additional issues of stock of any or all classes or bonds, debentures, or other obligations convertible into stock shall continue to be subject to such preemptive or preferential right of their present or future shareholders unless and until the articles of incorporation are amended to deny or limit such rights.

History: En. Sec. 136, Ch. 300, L. 1967; R.C.M. 1947, 15-22-136(part).

Cross-References

Statute of Limitations on actions against directors or stockholders, 27-2-211.

Preexisting corporations, 35-1-105.

Amendment of articles, 35-1-206.

35-1-513. Records — shareholder inspection rights. (1) Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its shareholders and board of directors. Each corporation shall keep, at its registered office or principal place of business or at the office of its transfer agent or registrar, a record of its shareholders giving the names and addresses of all shareholders and the number and class of the shares held by each.

(2) Any person who shall have been a shareholder of record for at least 6 months immediately preceding his demand or who shall be the holder of record of at least 5% of all the outstanding shares of a corporation, upon written demand stating the purpose thereof, shall have the right to examine, in person or by agent or attorney, at any reasonable time or times, for any proper purpose, its books and records of account, minutes, and record of shareholders and to make extracts therefrom.

(3) Any officer or agent who or a corporation which shall refuse to allow any such shareholder or his agent or attorney so to examine and make extracts from its books and records of account, minutes, and record of shareholders for any proper purpose shall be liable to such shareholder for such damages or other remedy as may be afforded him by law and for court costs and attorneys' fees incurred. It shall be a defense to any action under this section that the person suing therefor:

(a) has, within 2 years prior to the demand, sold or offered for sale any list of shareholders of such corporation or any other corporation or has aided or abetted any person in procuring any list of shareholders for any such purpose; or

(b) has improperly used or intends to improperly use any information secured or to be secured through the demanded inspection or any prior examination of the books and records of account or minutes or record of shareholders of such corporation or any other corporation; or

(c) was not acting and is not acting in good faith or for a proper purpose in making his demand.

(4) Nothing herein contained shall impair the power of any court of competent jurisdiction, upon proof by a shareholder of proper purpose, irrespective of the period of time during which such shareholder shall have been a shareholder of record and irrespective of the number of shares held by him, to compel the production for examination by such shareholder of the books and records of account, minutes, and record of shareholders of a corporation.

(5) Upon the written request of any shareholder of a corporation, the corporation shall mail to such shareholder its most recent financial statements showing in reasonable detail its assets and liabilities and the results of its operations.

History: En. Sec. 46, Ch. 300, L. 1967; R.C.M. 1947, 15-2246.

Cross-References

Books of corporation, fraud in keeping accounts, 45-6-301.

35-1-514. Actions by shareholders. (1) No action shall be brought in this state by a shareholder in the right of a domestic or foreign corporation unless the plaintiff was a holder of record of shares or of voting trust certificates therefor at the time of the transaction of which he complains or his shares or voting trust certificates thereafter devolved upon him by operation of law from a person who was a holder of record at such time.

(2) In any action hereafter instituted in the right of any domestic or foreign corporation by the holder or holders of record of shares of such corporation or of voting trust certificates therefor, the court having jurisdiction, upon final judgment and a finding that the action was brought without reasonable cause, may require the plaintiff or plaintiffs to pay to the parties named as defendants the reasonable expenses, including fees of attorneys, incurred by them in the defense of such action.

History: **En. Sec. 43, Ch. 300, L. 1967; R.C.M. 1947, 15-2243.**

35-1-515. Control of directors by shareholders. (1) A provision in the articles of incorporation otherwise prohibited by law because it improperly restricts the board of directors in its management of the business of the corporation or improperly transfers to one or more shareholders or to one or more persons or corporations to be selected by him or them all or any part of such management otherwise within the authority of the board under this chapter shall nevertheless be valid:

(a) if all the incorporators or holders of record of all outstanding shares, whether or not having voting power, have authorized such provision in the articles of incorporation or an amendment thereof; and

(b) if, subsequent to the adoption of such provision, shares are transferred or issued only to persons who had knowledge or notice thereof or consented in writing to such provision.

(2) A provision authorized by subsection (1) is valid only if no shares of the corporation are listed on a national securities exchange or regularly quoted in an over-the-counter market by one or more members of a national or affiliated securities association.

(3) Except as provided in subsection (4), an amendment to strike out a provision authorized by subsection (1) shall be authorized at a meeting of shareholders by vote of the holders of two-thirds of all outstanding shares entitled to vote thereon or by the holders of such greater proportion of shares as may be required by the articles of incorporation for that purpose.

(4) Alternatively, if a provision authorized by subsection (1) has ceased to be valid under this section, the board may authorize articles of amendment under 35-1-209, eliminating the provision. Such articles shall set forth the event by reason of which the provision ceased to be valid.

(5) The effect of any provision authorized by subsection (1) is to relieve the directors and impose upon the shareholders authorizing the provision or consenting thereto the liability for managerial acts or omissions that is imposed on directors by this chapter to the extent that and so long as the

discretion or powers of the board in its management of corporate affairs is controlled by any such provision.

(6) If the articles of incorporation of any corporation contain a provision authorized by subsection (1), the existence of the provision must be noted conspicuously on the face or back of every certificate for shares issued by such corporation.

History: **En. Sec. 29, Ch. 475, L. 1981.**

Part 6

Shares

Part Cross-References

U.C.C. — investment securities, Title 30, ch. 8.

Securities Act of Montana, Title 30, ch. 10.

Shares of cooperative associations, Title 35, ch. 15, part 4.

Stockholder provisions of agricultural associations, Title 35, ch. 16, part 2.

Stock of cooperative agricultural marketing associations, 35-17-302.

Conversion of corporation shares into rural cooperative utility memberships, 35-18-206.

Power to issue stock for mausoleum and columbarium authorities, 35-21-202.

35-1-601. Authorized shares. (1) Each corporation shall have power to create and issue the number of shares stated in its articles of incorporation. Such shares may be divided into one or more classes with such designations, preferences, limitations, and relative rights as shall be stated in the articles of incorporation. The articles of incorporation may limit or deny the voting rights of or provide special voting rights for the shares of any class to the extent not inconsistent with the provisions of this chapter or the Constitution of the State of Montana.

(2) Without limiting the authority herein contained, a corporation, when so provided in its articles of incorporation, may issue shares of preferred or special classes:

(a) subject to the right of the corporation to redeem any of such shares at the price fixed by the articles of incorporation for the redemption thereof;

(b) entitling the holders thereof to cumulative, noncumulative, or partially cumulative dividends;

(c) having preference over any other class or classes of shares as to the payment of dividends;

(d) having preference in the assets of the corporation over any other class or classes of shares upon the voluntary or involuntary liquidation of the corporation;

(e) convertible into shares of any other class or into shares of any series of the same or any other class, except a class having prior or superior rights and preferences as to dividends or distribution of assets upon liquidation.

(3) When authorized by its articles of incorporation to do so, a corporation may issue bonds, debentures, or other obligations convertible into shares of any class in the amounts and on such terms and conditions as may be provided by resolutions of the board of directors.

History: **En. Sec. 14, Ch. 300, L. 1967; R.C.M. 1947, 15-2214; amd. Sec. 30, Ch. 475, L. 1981.**

35-1-602. Issuance of shares of preferred or special classes in series — filing of statement. (1) If the articles of incorporation so provide, the shares of any preferred or special class may be divided into and issued in series. If the shares of any such class are to be issued in series, then each series shall be so designated as to distinguish the shares thereof from the shares of all other series and classes. Any or all of the series of any such class and the variations in the relative rights and preferences as between different series may be fixed and determined by the articles of incorporation, but all shares of the same class shall be identical except as to the following relative rights and preferences as to which there may be variations between different series:

(a) the rate of dividend;

(b) whether shares may be redeemed and, if so, the redemption price and the terms and conditions of redemption;

(c) the amount payable upon shares in event of voluntary and involuntary liquidation;

(d) sinking fund provisions, if any, for the redemption or purchase of shares;

(e) the terms and conditions, if any, on which shares may be converted; and

(f) voting rights, if any.

(2) If the articles of incorporation shall expressly vest authority in the board of directors, then, to the extent that the articles of incorporation shall not have established series and fixed and determined the variations in the relative rights and preferences as between series, the board of directors shall have authority to divide any or all of such classes into series and, within the limitations set forth in this section and in the articles of incorporation, fix and determine the relative rights and preferences of the shares of any series so established.

(3) In order for the board of directors to establish a series where authority so to do is contained in the articles of incorporation, the board of directors shall adopt a resolution setting forth the designation of the series and fixing and determining the relative rights and preferences thereof or so much thereof as shall not be fixed and determined by the articles of incorporation.

(4) Prior to the issue of any shares of a series established by resolution adopted by the board of directors, the corporation shall file in the office of the secretary of state a statement setting forth:

(a) the name of the corporation;

(b) a copy of the resolution establishing and designating the series and fixing and determining the relative rights and preferences thereof;

(c) the date of adoption of such resolution; and

(d) that such resolution was duly adopted by the board of directors.

(5) Such statement shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary. The original and one copy of such statement shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(b) file the original in his office; and

(c) return the copy to the corporation or its representative.

(6) Upon the filing of such statement by the secretary of state, the resolution establishing and designating the series and fixing and determining the relative rights and preferences thereof shall become effective and shall constitute an amendment of the articles of incorporation.

History: En. Sec. 15, Ch. 300, L. 1967; R.C.M. 1947, 15-2215; amd. Sec. 31, Ch. 475, L. 1981; amd. Sec. 18, Ch. 131, L. 1983; amd. Sec. 15, Ch. 174, L. 1983.

Cross-References

Filing fees, 35-1-1202.

35-1-603. Subscriptions for shares — remedies on default in payment. (1) A subscription for shares of a corporation to be organized shall be irrevocable for a period of 6 months, unless otherwise provided by the terms of the subscription agreement or unless all of the subscribers consent to the revocation of such subscription.

(2) Unless otherwise provided in the subscription agreement, subscriptions for shares, whether made before or after the organization of a corporation, shall be paid in full at such time or in such installments and at such times as shall be determined by the board of directors. Any call made by the board of directors for payment on subscriptions shall be uniform as to all shares of the same class or as to all shares of the same series, as the case may be.

(3) In case of default in the payment of any installment or call when such payment is due, the corporation may proceed to collect the amount due in the same manner as any debt due the corporation. The bylaws may prescribe other penalties for failure to pay installments or calls that may become due, but no penalty working a forfeiture of a subscription or of the amounts paid thereon shall be declared as against any subscriber unless the amount due thereon shall remain unpaid for a period of 20 days after written demand has been made therefor. If mailed, such written demand shall be deemed to be made when deposited in the United States mail in a sealed envelope addressed to the subscriber at his last post-office address known to the corporation with postage thereon prepaid. In the event of the sale of any shares by reason of any forfeiture, the excess of proceeds realized over the amount due and unpaid on such shares shall be paid to the delinquent subscriber or to his legal representative.

History: En. Sec. 16, Ch. 300, L. 1967; R.C.M. 1947, 15-2216.

35-1-604. Stock assessments — delinquency sale. The stock of any corporation for profit organized under the laws of this state shall not be assessable for any purpose except as expressly provided by statute and except that water companies, water users associations, irrigation companies, canal companies, ditch companies, and reservoir companies whose articles of incorporation provide for the assessment of shares may levy assessments at the times and in the amounts as may be prescribed by its articles of incorporation or if not so prescribed, then as follows:

(1) No one assessment must exceed 10% of the amount of the capital stock named in the articles of incorporation, except that if the whole capital stock of a corporation has not been paid up and the corporation is unable to meet its liabilities or to satisfy the claims of its creditors, the assessment may be for the full amount unpaid upon the capital stock or, if a less amount is sufficient, then it may be for such a percentage as will raise that amount.

(2) No assessment must be levied while any portion of a previous one remains unpaid, unless:

(a) the power of the corporation has been exercised in accordance with the provisions of this section for the purpose of collecting such previous assessment;

(b) the collection of the previous assessment has been enjoined; or

(c) the assessment falls within the provisions of 35-1-109.

(3) Every order levying an assessment must specify the amount thereof, when, to whom, and where payable. It must fix a day subsequent to the full term of publication of the assessment notice on which the unpaid assessment shall be delinquent, not less than 30 or more than 60 days from the time of making the order levying the assessment, and a day for the sale of delinquent stock, not less than 15 or more than 60 days from the day the stock is declared delinquent.

(4) Upon the making of the order, the secretary shall cause to be published a notice thereof in the following form:

(Name of corporation in full. Location of the principal place of business.) Notice is hereby given that at a meeting of the directors held on the (date) an assessment of (amount) per share was levied upon the capital stock of the corporation, payable (when, to whom, and where). Any stock upon which the assessment shall remain unpaid on the (day fixed) will be delinquent and advertised for sale at public auction and, unless payment is made before, will be sold on the (day appointed) to pay the delinquent assessment, together with costs of advertising and expenses of sale.

(Signature of secretary, with location of office.)

(5) The notice must be personally served upon each stockholder or, in lieu of personal service, must be sent within 10 days after the assessment through the mail addressed to each stockholder at his place of residence, if known, and, if not known, at the place where the principal office of the corporation is situated and be published once a week for 4 successive weeks in some newspaper of general circulation and devoted to the publication of general news at the place designated in the articles of incorporation as the principal place of business and also in some newspaper published in the county in which the works of the corporation are situated, if a paper be published therein. If the works of the corporation are not within a state or territory of the United States, publication in a paper of the place where they are situated is not necessary. If there be no newspaper published at the place designated as the principal place of business of the corporation, then the publication must be made in some other newspaper of the county if there be one and, if there be none, then in a newspaper published in an adjoining county.

(6) If any portion of the assessment mentioned in the notice remains unpaid on the days specified therein for declaring the stock delinquent, the secretary, unless otherwise ordered by the board of directors, shall cause to be published in the same papers in which the notice hereinbefore provided for shall have been published, a notice substantially in the following form:

(Name in full. Location of principal place of business.) Notice. There is delinquent upon the following subscribed stock, on account of assessment levied on the (date), (and assessments levied previous thereto, if any), the several amounts set opposite the names of respective shareholders as follows: (Names, number of certificate, number of shares, amounts.) And in accordance with law (and an order of the board of directors, made on the (date), if such order shall have been made), so many shares of each parcel of stock as may be necessary will be sold at the (particular place) on the (date) at (the hour) of such day to pay delinquent assessments thereon, together with costs of advertising and expenses of sale.

(Name of secretary, with location of office.)

(7) The notice must specify every certificate of stock, the number of shares it represents, and the amount due thereon, except where certificates may not have been issued to parties entitled thereto, in which case the number of shares and amount due thereon, together with the fact that the certificates for such shares have not been issued, must be stated.

(8) The notice when published in a daily paper must be published for 10 days, excluding Sundays and holidays, previous to the day of sale. When published in a weekly paper, it must be published in each for 2 weeks previous to the day of sale. The first publication of all delinquent sales must be at least 15 days prior to the day of sale.

(9) By the publication of the notice, the corporation acquires jurisdiction to sell and convey a perfect title to all of the stock described in the notice of sale upon which any portion of the assessment or costs of advertising remains unpaid at the hour appointed for the sale but must sell no more of such stock than is necessary to pay the assessment due and costs of sale.

(10) On the day, at the place, and at the time appointed in the notice of sale, the secretary must unless otherwise ordered by the board of directors sell or cause to be sold at public auction to the highest bidder for cash so many shares of each parcel of the described stock as may be necessary to pay the assessment and charges thereon, according to the terms of sale. If payment is made before the time fixed for sale, the party paying is only required to pay the actual cost of advertising, in addition to the assessment.

(11) The person offering at such sale to pay the assessment and costs for the smallest number of shares or fraction of a share is the highest bidder, and the stock purchased must be transferred to him on the stock books of the corporation on payment of the assessment and costs.

(12) If at the sale of stock no bidder offers the amount of the assessments and costs and charges due, the same may be bid in and purchased by the corporation through the president, secretary, or any director thereof at the amount of the assessments, costs, and charges due, and the amount of the assessments, costs, and charges must be credited as paid in full on the books of the corporation, and entry of the transfer of the stock to the corporation must be made on the books thereof. While the stock remains the property of the corporation it is not assessable nor must any dividends be declared thereon, but all assessments and dividends must be apportioned upon the stock held by the stockholders of the corporation.

(13) The dates fixed in any notice of assessment or notice of delinquent sale published according to the provisions hereof may be extended from time to time for not more than 30 days by order of the directors entered on the records of the corporation, but no order extending the time for the performance of any act specified in any notice is effectual unless notice of such

extension or postponement is appended to and published with the notice to which the order relates.

(14) No assessment is invalidated by a failure to make publication of the notices provided for or by the nonperformance of any act required in order to enforce the payment of the same, but in case of any substantial error or omission in the course of proceedings for collection, all previous proceedings, except the levying of the assessment, are void and publication must begin anew.

(15) No action must be sustained to recover stock sold for delinquent assessments upon the ground of irregularity or defect of the notice of sale or defect or irregularity in the sale unless the party seeking to maintain such action first pays or tenders to the corporation or the party holding the stock sold the sum for which the same was sold, together with all subsequent assessments which may have been paid thereon and interest on such sums from the time they were paid, and no such action must be sustained unless the same is commenced by the filing of a complaint and the issuing of a summons thereon within 6 months after such sale was made.

(16) The publication of notice required by this section must be proved by the affidavit of the printer, foreman, or principal clerk of the newspaper in which the same was published, and the affidavit of the secretary or auctioneer is prima facie evidence of the facts therein stated. Certificates signed by the secretary and under the seal of the corporation are prima facie evidence of the contents thereof.

(17) On the day specified for declaring the stock delinquent or at any time subsequent thereto and before the sale of the delinquent stock, the board of directors may elect to waive further proceedings under this chapter for the collection of delinquent assessments or any part or portion thereof and may elect to proceed by action to recover the amount of the assessment and the costs and expenses already incurred or any part or portion thereof.

History: En. Sec. 136, Ch. 300, L. 1967; R.C.M. 1947, 15-22-136(part), (1) thru (12), (14) thru (18).

Cross-References

Assessments of water users' associations, Title 85, ch. 6.

35-1-605. Issuance of shares. Subject to any restrictions in the articles of incorporation:

(1) shares may be issued for such consideration as may be authorized by the board of directors establishing a price in money or other consideration, a minimum price, general formula, or method by which the price will be determined; and

(2) upon authorization by the board of directors, the corporation may issue its own shares in exchange for or in conversion of its outstanding shares or distribute its own shares pro rata to its shareholders or the shareholders of one or more classes or series to effectuate stock dividends or splits, and any such transaction does not require consideration, provided that no such issuance of shares of any class or series may be made to the holders of shares of any other class or series unless it is either expressly provided for in the articles of incorporation or is authorized by an affirmative vote or the written

consent of the holders of at least a majority of the outstanding shares of the class or series in which the distribution is to be made.

History: En. Sec. 17, Ch. 300, L. 1967; R.C.M. 1947, 15-2217; amd. Sec. 32, Ch. 475, L. 1981.

Cross-References

Delivery of securities — conversion question, 30-8-318.

35-1-606. Modes of payment for shares. (1) The consideration for the issuance of shares may be paid, in whole or in part, in money, in other property, tangible or intangible, or in labor or services actually performed for the corporation. When payment of the consideration for which shares are to be issued shall have been received by the corporation, subject to the provisions of 35-1-604, such shares shall be nonassessable.

(2) Neither promissory notes nor future services shall constitute payment or part payment for shares of a corporation.

(3) In the absence of fraud in the transaction, the judgment of the board of directors or the shareholders, as the case may be, as to the value of the consideration received for shares shall be conclusive.

History: En. Sec. 18, Ch. 300, L. 1967; R.C.M. 1947, 15-2218(part); amd. Sec. 33, Ch. 475, L. 1981.

Cross-References

Fraud, 28-2-404 through 28-2-406.

Merger or consolidation, 35-1-807.

35-1-607. Stock rights and options. (1) Subject to any provisions in respect thereof set forth in its articles of incorporation, a corporation may create and issue, whether or not in connection with the issuance and sale of any of its shares or other securities, rights or options entitling the holders thereof to purchase from the corporation shares of any class or classes. Such rights or options shall be evidenced in such manner as the board of directors shall approve and, subject to the provisions of the articles of incorporation, shall set forth the terms upon which, the time or times within which, and the price or prices at which such shares may be purchased from the corporation upon the exercise of any such right or option.

(2) If such rights or options are to be issued to directors, officers, or employees as such of the corporation or of any subsidiary thereof and not to the shareholders generally, their issuance shall be approved by the affirmative vote of the holders of a majority of the shares entitled to vote thereon or shall be authorized by and consistent with a plan theretofore approved by such a vote of shareholders.

(3) In the absence of fraud in the transaction, the judgment of the board of directors as to the adequacy of the consideration received for such rights or options shall be conclusive.

History: En. Sec. 18, Ch. 300, L. 1967; R.C.M. 1947, 15-2218(part); amd. Sec. 34, Ch. 475, L. 1981.

35-1-608. Repealed. Sec. 62, Ch. 475, L. 1981.

History: En. Sec. 19, Ch. 300, L. 1967; R.C.M. 1947, 15-2219.

35-1-609. Expenses of organization, reorganization, and financing. The reasonable charges and expenses of organization or reorganization of a corporation and the reasonable expenses of and compensation for the sale or underwriting of its shares may be paid or allowed by such corporation out of the consideration received by it in payment for its shares without thereby rendering such shares not fully paid or assessable.

History: En. Sec. 20, Ch. 300, L. 1967; R.C.M. 1947, 15-2220.

35-1-610. Shares represented by certificates and uncertificated shares. (1) The shares of a corporation shall be represented by certificates or shall be uncertificated shares. Certificates shall be signed by the chairman or vice-chairman of the board of directors or the president or a vice-president and by the treasurer or an assistant treasurer or the secretary or an assistant secretary of the corporation and may be sealed with the seal of the corporation or a facsimile thereof. Any or all of the signatures upon a certificate may be facsimiles. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon such certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer, transfer agent, or registrar at the date of its issue.

(2) Every certificate representing shares issued by a corporation which is authorized to issue shares of more than one class shall set forth upon the face or back of the certificate or shall state that the corporation will furnish to any shareholder, upon request and without charge, a full statement of:

(a) the designations, preferences, limitations, and relative rights of the shares of each class authorized to be issued; and

(b) if the corporation is authorized to issue any preferred or special class in series, the variations in the relative rights and preferences between the shares of each such series so far as the same have been fixed and determined and the authority of the board of directors to fix and determine the relative rights and preferences of subsequent series.

(3) Each certificate representing shares shall state upon the face thereof:

(a) that the corporation is organized under the laws of this state;

(b) the name of the person to whom issued;

(c) the number and class of shares and the designation of the series, if any, which such certificate represents.

(4) No certificate shall be issued for any share until the consideration established for its issuance has been paid.

(5) Unless otherwise provided by the articles of incorporation or bylaws, the board of directors of a corporation may provide by resolution that some or all of any or all classes and series of its shares shall be uncertificated shares, provided that such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to subsections (2) and (3). Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated shares and the rights and obligations of the holders of certificates representing shares of the same class and series must be identical.

History: En. Sec. 21, Ch. 300, L. 1967; R.C.M. 1947, 15-2221; amd. Sec. 35, Ch. 475, L. 1981.

Cross-References

Certificated securities negotiable — statements and instructions not negotiable — presumptions, 30-8-105.

Registration of pledge and release of uncertificated securities, 30-8-108.

Business corporation law — applicability, 35-1-103.

Fraud in issuing or disposing of stock — theft, 45-6-301.

35-1-611. Issuance of fractional shares or scrip. A corporation may:

(1) issue fractions of a share, either represented by a certificate or uncertificated;

(2) arrange for the disposition of fractional interests by those entitled thereto;

(3) pay in money the fair value of fractions of a share as of the time when those entitled to receive such fractions are determined; or

(4) issue scrip in registered or bearer form which shall entitle the holder to receive a certificate for a full share or an uncertificated full share upon the surrender of such scrip aggregating a full share. A certificate for a fractional share or an uncertificated fractional share shall, but scrip shall not unless otherwise provided therein, entitle the holder to exercise voting rights, to receive dividends thereon, and to participate in any of the assets of the corporation in the event of liquidation. The board of directors may cause such scrip to be issued subject to the condition that it shall become void if not exchanged for certificates representing full shares or uncertificated full shares before a specified date or subject to the condition that the shares for which such scrip is exchangeable may be sold by the corporation and the proceeds thereof distributed to the holders of such scrip or subject to any other conditions which the board of directors may deem advisable.

History: En. Sec. 22, Ch. 300, L. 1967; R.C.M. 1947, 15-2222; amd. Sec. 36, Ch. 475, L. 1981.

35-1-612. Power of corporation to acquire its own shares. (1) A corporation shall have the power to acquire its own shares. All of its own shares acquired by a corporation, upon acquisition, constitute authorized but unissued shares unless the articles of incorporation provide that they may not be reissued, in which case the authorized shares shall be reduced by the number of shares acquired.

(2) If the number of authorized shares is reduced by an acquisition, the corporation shall, no later than the time it files its next annual report under this chapter with the secretary of state, file a statement of cancellation showing the reduction in the authorized shares. The statement of cancellation shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary and shall set forth:

(a) the name of the corporation;

(b) the number of acquired shares canceled, itemized by classes and series; and

(c) the aggregate number of authorized shares, itemized by classes and series, after giving effect to such cancellation.

(3) One original and one copy of the statement shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, he shall, when all fees and franchise taxes have been paid as in this chapter prescribed:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(b) file the original in his office; and

(c) return the copy to the corporation or its representative.

History: **En. Sec. 5, Ch. 300, L. 1967; R.C.M. 1947, 15-2205; amd. Sec. 37, Ch. 475, L. 1981; amd. Sec. 19, Ch. 131, L. 1983; amd. Sec. 16, Ch. 174, L. 1983.**

Cross-References

Right to cancel shares — power expressed in articles, 35-1-209.

Merger, consolidation, and sale of assets, Title 35, ch. 1, part 8.

Share transfer restrictions, Title 35, ch. 9, part 2.

35-1-613 through 35-1-616. Repealed. Sec. 62, Ch. 475, L. 1981.

Compiler's Comments

Histories of Repealed Sections:

35-1-613. En. Sec. 136, Ch. 300, L. 1967; R.C.M. 1947, 15-22-136(part).

35-1-614. En. Sec. 60, Ch. 300, L. 1967; R.C.M. 1947, 15-2260.

35-1-615. En. Sec. 61, Ch. 300, L. 1967; R.C.M. 1947, 15-2261.

35-1-616. En. Sec. 62, Ch. 300, L. 1967; R.C.M. 1947, 15-2262.

35-1-617. Restriction on transfer of shares. (1) A written restriction on the transfer or registration of transfer of shares of a corporation, if permitted by this section and noted conspicuously on the certificate representing such shares, may be enforced against the holder of the restricted shares or any successor or transferee of the holder, including an executor, administrator, trustee, guardian, or other fiduciary entrusted with like responsibility for the person or estate of the holder. Unless noted conspicuously on the certificate, a restriction, even though permitted by this section, is ineffective except against a person with actual knowledge of the restriction.

(2) A restriction on the transfer or registration of transfer of shares of a corporation may be imposed by the articles of incorporation, the bylaws, or an agreement among any number of shareholders or among such holders and the corporation. No restriction so imposed is binding with respect to shares issued prior to the adoption of the restriction unless the holders of the shares are parties to an agreement or voted in favor of the restriction.

(3) A restriction on the transfer of shares of a corporation is permitted by this section if it:

(a) obligates the holder of the restricted shares to offer to the corporation, to any other holders of shares of the corporation, to any other person, or to any combination of the foregoing a prior opportunity, to be exercised within a reasonable time, to acquire the restricted shares;

(b) obligates the corporation, any holder of shares of the corporation, any other person, or any combination of the foregoing to purchase the shares which are the subject of an agreement respecting the purchase and sale of the restricted shares;

(c) requires the corporation or the holder of any class of shares of the corporation to consent to any proposed transfer of the restricted shares or to approve the proposed transferee of the restricted shares; or

(d) prohibits the transfer of the restricted shares to designated persons or classes of persons, and the designation is not manifestly unreasonable.

(4) Any restriction on the transfer of the shares of a corporation for the purpose of maintaining its status as an electing small business corporation under subchapter S of the United States Internal Revenue Code (26 U.S.C.A. 1371, et seq.) is conclusively presumed to be for a reasonable purpose.

(5) Any other lawful restriction on transfer or registration of transfer of shares is permitted by this section.

(6) Except as otherwise provided in this section, the transfer of shares and the certificates representing such shares are governed by Title 30, chapter 8.

History: En. Sec. 38, Ch. 475, L. 1981.

Cross-References

Share transfer restrictions, Title 35, ch. 9, part 2.

Part 7

Distributions

35-1-701 through 35-1-705. Repealed. Sec. 62, Ch. 475, L. 1981.

Compiler's Comments

Histories of Repealed Sections:

35-1-701. En. Sec. 40, Ch. 300, L. 1967; R.C.M. 1947, 15-2240(part).

35-1-702. En. Sec. 40, Ch. 300, L. 1967; R.C.M. 1947, 15-2240(part).

35-1-703. En. Sec. 41, Ch. 300, L. 1967; R.C.M. 1947, 15-2241.

35-1-704. En. Sec. 63, Ch. 300, L. 1967; R.C.M. 1947, 15-2263.

35-1-705. En. Sec. 64, Ch. 300, L. 1967; R.C.M. 1947, 15-2264.

35-1-706 through 35-1-710 reserved.

35-1-711. Distributions to shareholders. (1) Subject to any restrictions in the articles of incorporation, the board of directors may authorize and the corporation may make distributions, except that no distribution may be made if, after giving effect thereto, either:

(a) the corporation would be unable to pay its debts as they become due in the usual course of its business; or

(b) the corporation's total assets would be less than the sum of its total liabilities and, unless the articles of incorporation permit otherwise, the maximum amount that then would be payable in any liquidation in respect of all outstanding shares having preferential rights in liquidation.

(2) Determinations under subsection (1)(b) may be based upon:

(a) financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances; or

(b) a fair valuation or other method that is reasonable in the circumstances.

(3) In the case of a purchase, redemption, or other acquisition of a corporation's shares, the effect of a distribution must be measured as of the date money or other property is transferred or debt is incurred by the corporation or as of the date the shareholder ceases to be a shareholder of the corporation with respect to such shares, whichever is earlier. In all other cases, the effect of a distribution shall be measured as of the date of its authorization if payment occurs within 120 days after the authorization date or as of the date of payment if payment occurs more than 120 days after the authorization date.

(4) Indebtedness of a corporation incurred or issued to a shareholder in a distribution in accordance with this section must be on a parity with the indebtedness of the corporation to its general unsecured creditors except to the extent subordinated by agreement.

History: En. Sec. 39, Ch. 475, L. 1981.

Part 8

Merger, Consolidation, Share Exchange, and Sale of Assets

35-1-801. Procedure for merger, consolidation, and share exchange. (1) (a) Any two or more domestic corporations may merge into one of such corporations pursuant to a plan of merger approved in the manner provided in this chapter.

(b) The board of directors of each corporation shall, by resolution adopted by each such board, approve a plan of merger setting forth:

(i) the names of the corporations proposing to merge and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation;

(ii) the terms and conditions of the proposed merger;

(iii) the manner and basis of converting the shares of each corporation into shares or other securities or obligations of the surviving corporation or any other corporation or, in whole or in part, into cash or other property;

(iv) a statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger;

(v) such other provisions with respect to the proposed merger as are deemed necessary or desirable.

(2) (a) Any two or more domestic corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in this chapter.

(b) The board of directors of each corporation shall, by resolution adopted by each board, approve a plan of consolidation setting forth:

(i) the names of the corporations proposing to consolidate and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation;

(ii) the terms and conditions of the proposed consolidation;

(iii) the manner and basis of converting the shares of each corporation into shares or other securities or obligations of the new corporation or any other corporation or, in whole or in part, into cash or other property;

(iv) with respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this chapter; and

(v) such other provisions with respect to the proposed consolidation as are considered necessary or desirable.

(3) (a) All the issued or all the outstanding shares of one or more classes of any domestic corporation may be acquired through the exchange of all shares of such class or classes by another domestic or foreign corporation pursuant to a plan of exchange approved in the manner provided in this chapter.

(b) The board of directors of each corporation shall, by resolution adopted by each such board, approve a plan of exchange setting forth:

(i) the name of the corporation the shares of which are proposed to be acquired by exchange and the name of the corporation to acquire the shares of such corporation in the exchange, which is hereinafter designated as the acquiring corporation;

(ii) the terms and conditions of the proposed exchange;

(iii) the manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring corporation or any other corporation or, in whole or in part, for cash or other property; and

(iv) such other provisions with respect to the proposed exchange as are considered necessary or desirable.

(c) The procedure authorized by this section does not limit the power of a corporation to acquire all or part of the shares of any class or classes of a corporation, through a voluntary exchange or otherwise, by agreement with the shareholders.

History: **En. Sec. 65, Ch. 300, L. 1967; R.C.M. 1947, 15-2265; amd. Sec. 1, Ch. 328, L. 1979; amd. Sec. 40, Ch. 475, L. 1981.**

35-1-802. Repealed. Sec. 62, Ch. 475, L. 1981.

History: **En. Sec. 66, Ch. 300, L. 1967; R.C.M. 1947, 15-2266; amd. Sec. 2, Ch. 328, L. 1979.**

35-1-803. Approval of shareholders required. (1) The board of directors of each corporation, in the case of a merger or consolidation, and the board of directors of the corporation the shares of which are to be acquired in the case of an exchange, upon approving such plan of merger, plan of consolidation, or exchange, shall by resolution direct that the plan be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) Written notice shall be given to each shareholder of record, whether or not entitled to vote at such meeting, not less than 30 days before such meeting, in the manner provided in this chapter for the giving of notice of meetings of shareholders and, whether the meeting be an annual or a special meeting, shall state that the purpose or one of the purposes is to consider the proposed plan of merger, consolidation, or exchange. A copy or a summary of the plan of merger, consolidation, or exchange, as the case may be, shall be included in or enclosed with such notice.

(3) At each such meeting a vote of the shareholders shall be taken on the proposed plan. The plan shall be approved upon receiving the affirmative vote of the holders of two-thirds of the shares entitled to vote thereon of each such corporation, unless any class of shares of any such corporation is entitled to vote thereon as a class, in which event, as to such corporation, the plan shall be approved upon receiving the affirmative vote of the holders of two-thirds of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon. Any class of shares of any such corporation shall be entitled to vote as a class if the plan contains any provision which, if contained in a proposed amendment to articles of incorporation, would entitle such class of shares to vote as a class or, in the case of an exchange, if the class is included in the exchange.

(4) After the approval by a vote of the shareholders of each of these corporations and at any time prior to the filing of the articles of merger, consolidation, or exchange, the merger, consolidation, or exchange may be abandoned pursuant to provisions therefor, if any, set forth in the plan.

(5) (a) Notwithstanding the provisions of subsections (1) through (3), submission of a plan of merger to a vote at a meeting of shareholders of a surviving corporation is not required if:

(i) the articles of incorporation of the surviving corporation do not differ except in name from those of the corporation before the merger;

(ii) each holder of shares of the surviving corporation that were outstanding immediately before the effective date of the merger is to hold the same number of shares with identical rights immediately after;

(iii) the number of voting shares outstanding immediately after the merger plus the number of voting shares issuable on conversion of other securities issued by virtue of the terms of the merger and on exercise of rights and warrants so issued will not exceed by more than 20% the number of voting shares outstanding immediately before the merger; and

(iv) the number of participating shares outstanding immediately after the merger plus the number of participating shares issuable on conversion of other securities issued by virtue of the terms of the merger and on exercise of rights and warrants so issued will not exceed by more than 20% the number of participating shares outstanding immediately before the merger.

(b) As used in subsection (5)(a):

(i) "voting shares" means shares which entitle their holders to vote unconditionally in elections of directors;

(ii) "participating shares" means shares which entitle their holders to participate without limitation in distribution of earnings or surplus.

History: **En. Sec. 67, Ch. 300, L. 1967; R.C.M. 1947, 15-2267; amd. Sec. 41, Ch. 475, L. 1981.**

Cross-References

Notice of shareholders' meetings, 35-1-502.

Sale of assets — approval required, 35-1-809.

Dissolution of corporation — vote of shareholders, 35-1-903.

Articles of merger — foreign corporation, 35-1-1016.

Appeal from refusal to approve articles of merger or consolidation, 35-1-1304.

35-1-804. Articles of merger, consolidation, or exchange — contents — filing. (1) Upon receiving the approvals required by 35-1-801 and 35-1-803, articles of merger, consolidation, or exchange shall be executed by each corporation by its president or a vice-president and by its secretary or an assistant secretary and shall set forth:

(a) the plan of merger, consolidation, or exchange;

(b) as to each corporation, either:

(i) the number of shares outstanding and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class; or

(ii) a statement that the vote of shareholders is not required by virtue of 35-1-803(5); and

(c) as to each corporation the approval of whose shareholders is required, the number of shares voted for and against such plan, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against such plan, respectively.

(2) One original and one copy of the articles of merger, consolidation, or exchange shall be delivered to the secretary of state. If the secretary of state finds that such articles conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(b) file the original in his office; and

(c) issue a certificate of merger, consolidation, or exchange to which he shall affix the copy.

(3) The certificate of merger, consolidation, or exchange, together with the copy of the articles of merger, consolidation, or exchange affixed thereto by the secretary of state, shall be returned to the surviving, new, or acquiring corporation, as the case may be, or its representative.

History: **En. Sec. 68, Ch. 300, L. 1967; R.C.M. 1947, 15-2268(part); amd. Sec. 42, Ch. 475, L. 1981; amd. Sec. 20, Ch. 131, L. 1983; amd. Sec. 17, Ch. 174, L. 1983.**

Cross-References

Articles of merger — foreign corporation, 35-1-1016.

Filing fee, 35-1-1202.

35-1-805. Merger of subsidiary without shareholder approval. (1) Any corporation owning at least 95% of the outstanding shares of each class of another corporation may merge such other corporation into itself without approval by a vote of the shareholders of either corporation. Its board of directors shall, by resolution, approve a plan of merger setting forth:

(a) the name of the subsidiary corporation and the name of the corporation owning at least 95% of its shares, which is hereinafter designated as the surviving corporation; and

(b) the manner and basis of converting the shares of the subsidiary corporation into shares or other securities or obligations of the surviving corporation or of any other corporation or, in whole or in part, into cash or other property.

(2) A copy of such plan of merger shall be mailed to each shareholder of record of the subsidiary corporation.

(3) Articles of merger shall be executed by the surviving corporation by its president or a vice-president and by its secretary or an assistant secretary and shall set forth:

(a) the plan of merger;

(b) the number of outstanding shares of each class of the subsidiary corporation and the number of such shares of each class owned by the surviving corporation; and

(c) the date of the mailing to shareholders of the subsidiary corporation of a copy of the plan of merger.

(4) On or after the 30th day after the mailing of a copy of the plan of merger to shareholders of the subsidiary corporation or upon the waiver thereof by the holders of all outstanding shares, one original and one copy of the articles of merger shall be delivered to the secretary of state. If the secretary of state finds that such articles conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(b) file the original in his office; and

(c) issue a certificate of merger to which he shall affix the copy.

(5) The certificate of merger, together with the copy of the articles of merger affixed thereto by the secretary of state, shall be returned to the surviving corporation or its representative.

History: **En. Sec. 68, Ch. 300, L. 1967; R.C.M. 1947, 15-2268(part); amd. Sec. 43, Ch. 475, L. 1981; amd. Sec. 21, Ch. 131, L. 1983; amd. Sec. 18, Ch. 174, L. 1983.**

Cross-References

Filing required for foreign corporation, 35-1-1016.

Filing fees, 35-1-1202.

Appeal from refusal to approve articles of merger, 35-1-1304.

35-1-806. Effect of merger, consolidation, or exchange. (1) A merger, consolidation, or exchange becomes effective upon the issuance of a certificate of merger, consolidation, or exchange by the secretary of state or on a later date, not more than 30 days subsequent to the filing thereof with the secretary of state, as provided for in the plan.

(2) When a merger or consolidation has become effective:

(a) the several corporations parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation;

(b) the separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease;

(c) the surviving or new corporation shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a corporation organized under this chapter;

(d) the surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, as well of a public as of a private nature, of each of the merging or consolidating corporations. All property, real, personal, and mixed, and all debts due on whatever account, including subscriptions to shares, and all other choses in action and all and every other interest of or belonging to or due to each of the corporations so merged or consolidated shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed. The title to any real estate or any interest therein vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation.

(e) the surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated. Any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted as if such merger or consolidation had not taken place or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by such merger or consolidation.

(f) in the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the plan of merger. In the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under this chapter shall be deemed to be the original articles of incorporation of the new corporation.

(3) When a merger, consolidation, or exchange has become effective, the shares of the corporation or corporations party to the plan that are to be converted or exchanged under the terms of the plan shall cease to exist, in the

case of a merger or consolidation, or be considered to be exchanged, in the case of an exchange. The holders of such shares are thereafter entitled to only the shares, obligations, other securities, cash, or other property into which they have been converted or for which they have been exchanged in accordance with the plan and subject to any rights under 35-1-810.

History: **En. Sec. 69, Ch. 300, L. 1967; R.C.M. 1947, 15-2269; amd. Sec. 44, Ch. 435, L. 1981.**

Cross-References

Effect of merger or consolidation — nonprofit corporations, 35-2-605.

35-1-807. Merger, consolidation, or exchange of shares between domestic and foreign corporations. One or more foreign corporations and one or more domestic corporations may be merged, consolidated, or participate in an exchange in the following manner if such merger, consolidation, or exchange is permitted by the laws of the state under which each such foreign corporation is organized:

(1) Each domestic corporation shall comply with the provisions of this chapter with respect to the merger, consolidation, or exchange, as the case may be, of domestic corporations, and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized.

(2) If the surviving or new corporation in a merger or consolidation is to be governed by the laws of any state other than this state, it shall comply with the provisions of this chapter with respect to foreign corporations if it is to transact business in this state, and in every case it shall file with the secretary of state of this state:

(a) an agreement that it may be served with process in this state in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such domestic corporation against the surviving or new corporation;

(b) an irrevocable appointment of the secretary of state of this state as its agent to accept service of process in any such proceeding; and

(c) an agreement that it will promptly pay to the dissenting shareholders of any such domestic corporation the amount, if any, to which they shall be entitled under the provisions of this chapter with respect to the rights of dissenting shareholders.

History: **En. Sec. 70, Ch. 300, L. 1967; R.C.M. 1947, 15-2270; amd. Sec. 45, Ch. 475, L. 1981.**

Cross-References

Removal of officers, 35-1-411.

Acquisition of its own shares by corporation, 35-1-612.

Survival of remedy after dissolution — continuance of corporate existence for certain purposes, 35-1-930.

Change of registered office or agent, 35-1-1013.

Merger or consolidation of domestic and foreign corporations, 35-2-606.

Grounds for involuntary dissolution, 35-6-102.

35-1-808. Sale of assets in regular course of business and mortgage or pledge of assets. The sale, lease, exchange, or other disposition of all or substantially all the property and assets of a corporation in the usual and regular course of its business and the mortgage or pledge of any or all property and assets of a corporation whether or not in the usual and regular course of business may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares, obligations, or other securities of any other corporation, domestic or foreign, as shall be authorized by its board of directors. In any such case no authorization or consent of the shareholders shall be required.

History: En. Sec. 71, Ch. 300, L. 1967; R.C.M. 1947, 15-2271; amd. Sec. 46, Ch. 475, L. 1981.

Cross-References

Activities not to be considered transacting business, 35-1-1002.

Sale of assets — nonprofit corporations, 35-2-607.

35-1-809. Sale of assets not in regular course of business — shareholder approval. A sale, lease, exchange, or other disposition of all or substantially all the property and assets, with or without the good will, of a corporation, if not in the usual and regular course of its business, may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares, obligations, or other securities of any other corporation, domestic or foreign, as may be authorized in the following manner:

(1) The board of directors shall adopt a resolution recommending such sale, lease, exchange, or other disposition and directing the submission thereof to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) Written notice shall be given to each shareholder of record, whether or not entitled to vote at such meeting, not less than 30 days before such meeting, in the manner provided in this chapter for the giving of notice of meetings of shareholders and, whether the meeting be an annual or a special meeting, shall state that the purpose or one of the purposes is to consider the proposed sale, lease, exchange, or other disposition.

(3) At such meeting the shareholders may authorize such sale, lease, exchange, or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require the affirmative vote of the holders of two-thirds of the shares of the corporation entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event such authorization shall require the affirmative vote of the holders of two-thirds of the shares of each class of shares entitled to vote as a class thereon and of the total shares entitled to vote thereon.

(4) After such authorization by a vote of shareholders, the board of directors nevertheless in its discretion may abandon such sale, lease, exchange, or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by shareholders.

History: En. Sec. 72, Ch. 300, L. 1967; amd. Sec. 1, Ch. 125, L. 1969; R.C.M. 1947, 15-2272; amd. Sec. 47, Ch. 475, L. 1981.

Cross-References

Notice of shareholders' meetings, 35-1-502.

35-1-810. Right of shareholders to dissent and obtain payment for shares. (1) Any shareholder of a corporation shall have the right to dissent from and to obtain payment for his shares in the event of any of the following corporate actions:

(a) any plan of merger or consolidation to which the corporation is a party, except as provided in subsection (3);

(b) any sale or exchange of all or substantially all of the property and assets of the corporation not made in the usual and regular course of its business, including a sale in dissolution but not including a sale pursuant to an order of a court having jurisdiction in the premises or a sale for cash on terms requiring that all or substantially all of the net proceeds of sale be distributed to the shareholders in accordance with their respective interests within 1 year after the date of sale;

(c) any plan of exchange to which the corporation is a party as the corporation whose shares are to be acquired;

(d) any amendment of the articles of incorporation which affects the rights appurtenant to the shares of the dissenting shareholder materially and adversely in that it:

(i) alters or abolishes a preferential right of such shares;

(ii) creates, alters, or abolishes a right in respect of the redemption of such shares, including a provision respecting a sinking fund for the redemption or repurchase of such shares;

(iii) alters or abolishes a preemptive right of the holder of such shares to acquire shares or other securities;

(iv) excludes or limits the right of the holder of such shares to vote on any matter or to cumulate his votes, except as such right may be limited by dilution through the issuance of shares or other securities with similar voting rights; or

(e) any other corporate action taken pursuant to a shareholder vote with respect to which the articles of incorporation, the bylaws, or a resolution of the board of directors directs that dissenting shareholders have a right to obtain payment for their shares.

(2) (a) A record holder of shares may assert dissenters' rights as to less than all of the shares registered in his name only if he dissents with respect to all the shares beneficially owned by any one person and discloses the names and addresses of the persons on whose behalf he dissents. In that event, his rights shall be determined as if the shares as to which he has dissented and his other shares were registered in the names of different shareholders.

(b) A beneficial owner of shares who is not the record holder may assert dissenters' rights with respect to shares held on his behalf and shall be treated as a dissenting shareholder under the terms of this section and 35-1-812 if he submits to the corporation at the time of or before the assertion of these rights a written consent of the record holder.

(3) The right to obtain payment under this section shall not apply to the shareholders of the surviving corporation in a merger if a vote of the shareholders of such corporation is not necessary to authorize such merger.

(4) A shareholder of a corporation who has a right under this section to obtain payment for his shares has no right at law or in equity to attack the validity of the corporate action that gives rise to his right to obtain payment nor to have the action set aside or rescinded, except when the corporate

action is unlawful or fraudulent with regard to the complaining shareholder or to the corporation.

History: En. Sec. 73, Ch. 300, L. 1967; R.C.M. 1947, 15-2273; amd. Sec. 48, Ch. 475, L. 1981.

35-1-811. Repealed. Sec. 62, Ch. 475, L. 1981.

History: En. Sec. 74, Ch. 300, L. 1967; amd. Sec. 11, Ch. 62, L. 1977; R.C.M. 1947, 15-2274.

35-1-812. Procedures for protection of dissenters' rights. (1) As used in this section:

(a) "Dissenter" means a shareholder or beneficial owner who is entitled to and does assert dissenters' rights under 35-1-810 and who has performed every act required up to the time involved for the assertion of such rights.

(b) "Corporation" means the issuer of the shares held by the dissenter before the corporate action or the successor of that issuer by merger or consolidation.

(c) "Fair value" of shares means their value immediately before the effectuation of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of such corporate action unless such exclusion would be inequitable.

(d) "Interest" means interest from the effective date of the corporate action until the date of payment, at the average rate currently paid by the corporation on its principal bank loans or, if none, at such rate as is fair and equitable under all the circumstances.

(2) If a proposed corporate action which would give rise to dissenters' rights under 35-1-810(1) is submitted to a vote at a meeting of shareholders, the notice of meeting shall notify all shareholders that they have or may have a right to dissent and obtain payment for their shares by complying with the terms of this section and shall be accompanied by a copy of 35-1-810 and this section.

(3) If the proposed corporate action is submitted to a vote at a meeting of shareholders, any shareholder who wishes to dissent and obtain payment for his shares must file with the corporation, prior to the vote, a written notice of intention to demand that he be paid fair compensation for his shares if the proposed action is effectuated and shall refrain from voting his shares in approval of such action. A shareholder who fails in either respect acquires no right to payment for his shares under this section or 35-1-810.

(4) If the proposed corporate action is approved by the required vote at a meeting of shareholders, the corporation shall mail a further notice to all shareholders who gave due notice of intention to demand payment and who refrained from voting in favor of the proposed action. If the proposed corporate action is to be taken without a vote of shareholders, the corporation shall send a notice of the adoption of the plan of corporate action to all shareholders who are entitled to dissent and demand payment for their shares. The notice shall:

(a) state where and when a demand for payment must be sent and certificates of certificated shares must be deposited in order to obtain payment;

(b) inform holders of uncertificated shares to what extent transfer of shares will be restricted from the time that demand for payment is received;

(c) supply a form for demanding payment, which includes a request for certification of the date on which the shareholder or the person on whose behalf the shareholder dissents acquired beneficial ownership of the shares; and

(d) be accompanied by a copy of 35-1-810 and this section. The time set for the demand and deposit may not be less than 30 days from the mailing of the notice.

(5) A shareholder who fails to demand payment or fails (in the case of certificated shares) to deposit certificates as required by a notice pursuant to subsection (4) has no right under this section or 35-1-810 to receive payment for his shares. If the shares are not represented by certificates, the corporation may restrict their transfer from the time of receipt of demand for payment until effectuation of the proposed corporate action or the release of restrictions under the terms of subsection (6). The dissenter retains all other rights of a shareholder until those rights are modified by effectuation of the proposed corporate action.

(6) (a) Within 60 days after the date set for demanding payment and depositing certificates, if the corporation has not effectuated the proposed corporate action and remitted payment for shares pursuant to subsection (6)(c), it shall return any certificates that have been deposited and release uncertificated shares from any transfer restrictions imposed by reason of the demand for payment.

(b) When uncertificated shares have been released from transfer restrictions and deposited certificates have been returned, the corporation may at any later time send a new notice conforming to the requirements of subsection (4), with like effect.

(c) Immediately upon effectuation of the proposed corporate action or upon receipt of demand for payment if the corporate action has already been effectuated, the corporation shall remit to dissenters who have made demand and, if their shares are certificated, have deposited their certificates, the amount that the corporation estimates to be the fair value of the shares, with interest if any has accrued. The remittance shall be accompanied by:

(i) the corporation's closing balance sheet and statement of income for a fiscal year ending not more than 16 months before the date of remittance, together with the latest available interim financial statement;

(ii) a statement of the corporation's estimate of fair value of the shares; and

(iii) a notice of the dissenter's right to demand supplemental payment.

(7) (a) If the corporation fails to remit as required by subsection (6) or if the dissenter believes that the amount remitted is less than the fair value of his shares or that the interest is not correctly determined, he may send the corporation his own estimate of the value of the shares or of the interest and demand payment of the deficiency.

(b) If the dissenter does not file such an estimate within 30 days after the corporation's mailing of its remittance, he shall be entitled to no more than the amount remitted.

(8) (a) Within 60 days after receiving a demand for payment pursuant to subsection (7), if any such demands for payment remain unsettled, the corporation shall file in an appropriate court a petition requesting that the fair value of the shares and interest thereon be determined by the court.

(b) An appropriate court is the district court in the county of this state where the registered office of the corporation is located. If, in the case of a merger, consolidation, or exchange of shares, the corporation is a foreign corporation without a registered office in this state, the petition shall be filed in the county where the registered office of the foreign corporation was last located.

(c) All dissenters, wherever residing, whose demands have not been settled shall be made parties to the proceeding as in an action against their shares. A copy of the petition shall be served on each such dissenter. If a dissenter is a nonresident, the copy may be served on him by registered or certified mail or by publication as provided by law.

(d) The jurisdiction of the court is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have such power as may be specified in the order of their appointment or in any amendment thereof. The dissenters shall be entitled to discovery in the same manner as parties in other civil suits.

(e) All dissenters who are made parties shall be entitled to judgment for the amount by which the fair value of their shares is found to exceed the amount previously remitted, with interest.

(f) If the corporation fails to file a petition as provided in subsection (8)(a), each dissenter who made a demand and who has not already settled his claim against the corporation shall be paid by the corporation the amount demanded by him, with interest, and may sue therefor in an appropriate court.

(9) (a) The costs and expenses of any proceeding under subsection (8), including the reasonable compensation and expenses of appraisers appointed by the court, shall be determined by the court and assessed against the corporation, except that any part of the costs and expenses shall be apportioned and assessed as the court may consider equitable against all or some of the dissenters who are parties and whose action in demanding supplemental payment the court finds to be arbitrary, vexatious, or not in good faith.

(b) Fees and expenses of counsel and of experts for the respective parties may be assessed as the court considers equitable against the corporation and in favor of any or all dissenters if the corporation failed to comply substantially with the requirements of this section. The fees and expenses shall be assessed against either the corporation or a dissenter in favor of any other party if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith in respect to the rights provided by this section and 35-1-810.

(c) If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated and should not be assessed against the corporation, it may award to these counsel reasonable fees, to be paid out of the amounts awarded to the dissenters who were benefited.

(10) (a) Notwithstanding the foregoing provisions of this section, the corporation may elect to withhold the remittance required by subsection (6) from any dissenter with respect to shares of which the dissenter, or the person on whose behalf the dissenter acts, was not the beneficial owner on the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action. With respect to such shares, the corporation shall,

upon effectuating the corporate action, state to each dissenter its estimate of the fair value of the shares, state the rate of interest to be used, explaining the basis thereof, and offer to pay the resulting amounts on receiving the dissenter's agreement to accept them in full satisfaction.

(b) If the dissenter believes that the amount offered is less than the fair value of the shares and interest determined according to this section, he may, within 30 days after the date of mailing of the corporation's offer, mail the corporation his own estimate of fair value and interest and demand their payment. If the dissenter fails to do so, he is entitled to no more than the corporation's offer.

(c) If the dissenter makes a demand as provided in subsection (b), the provisions of subsections (8) and (9) apply to further proceedings on the dissenter's demand.

History: En. Sec. 49, Ch. 475, L. 1981.

Part 9

Dissolution and Liquidation

Part Cross-References

Cancellation of registration of assumed business name upon dissolution of domestic corporation, 30-13-214.

Dissolution and liquidation of nonprofit corporations, Title 35, ch. 2, part 7.

Involuntary corporate dissolution, Title 35, ch. 6.

Dissolution and winding up of partnerships in general, Title 35, ch. 10, part 6.

Dissolution of limited partnerships, Title 35, ch. 12, part 12.

Sale or disposition of assets of cooperative associations, 35-15-506.

Sale or disposition of assets of cooperative agricultural marketing associations, 35-17-506.

Dissolution of rural cooperative utilities, 35-18-404, 35-18-405.

35-1-901. Voluntary dissolution by incorporators or initial board of directors — filing of articles of dissolution. A corporation which has not commenced business and which has not issued any shares may be voluntarily dissolved by its incorporators at any time in the following manner:

(1) Articles of dissolution shall be executed by a majority of the incorporators or initial board of directors and shall set forth:

(a) the name of the corporation;

(b) the date of issuance of its certificate of incorporation;

(c) that none of its shares has been issued;

(d) that the corporation has not commenced business;

(e) that the amount, if any, actually paid in on subscriptions for its shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto;

(f) that no debts of the corporation remain unpaid; and

(g) that a majority of the incorporators elect that the corporation be dissolved.

(2) One original and one copy of the articles of dissolution shall be delivered to the secretary of state. If the secretary of state finds that the articles of dissolution conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(b) file the original in his office; and

(c) issue a certificate of dissolution to which he shall affix the copy.

(3) The certificate of dissolution, together with the copy of the articles of dissolution affixed thereto by the secretary of state, shall be returned to the incorporators, the board of directors, or their representative. Upon the issuance of such certificate of dissolution by the secretary of state, the existence of the corporation shall cease.

History: En. Sec. 75, Ch. 300, L. 1967; R.C.M. 1947, 15-2275; amd. Sec. 50, Ch. 475, L. 1981; amd. Sec. 22, Ch. 131, L. 1983; amd. Sec. 19, Ch. 174, L. 1983.

Cross-References

Filing fees, 35-1-1202.

Appeal from disapproval of articles of dissolution, 35-1-1304.

Articles of dissolution for nonprofit corporations, 35-2-706.

35-1-902. Voluntary dissolution by consent of shareholders — statement of intent. (1) A corporation may be voluntarily dissolved by the written consent of all of its shareholders.

(2) Upon the execution of such written consent, a statement of intent to dissolve shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary and shall set forth:

(a) the name of the corporation;

(b) the names and respective addresses of its officers;

(c) the names and respective addresses of its directors;

(d) a copy of the written consent signed by all shareholders of the corporation; and

(e) a statement that such written consent has been signed by all shareholders of the corporation or signed in their names by their attorneys thereunto duly authorized.

History: En. Sec. 76, Ch. 300, L. 1967; R.C.M. 1947, 15-2276; amd. Sec. 23, Ch. 131, L. 1983; amd. Sec. 20, Ch. 174, L. 1983.

35-1-903. Voluntary dissolution by act of corporation — statement of intent. A corporation may be dissolved by the act of the corporation when authorized in the following manner:

(1) The board of directors shall adopt a resolution recommending that the corporation be dissolved and directing that the question of such dissolution be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) Written notice shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders and, whether the meeting be an annual or special meeting, shall state that the purpose or one of the purposes of such meeting is to consider the advisability of dissolving the corporation.

(3) At such meeting a vote of shareholders entitled to vote thereat shall be taken on a resolution to dissolve the corporation. Such resolution shall be adopted upon receiving the affirmative vote of the holders of two-thirds of the shares of the corporation entitled to vote thereon unless any class of shares is entitled to vote thereon as a class, in which event the resolution

shall be adopted upon receiving the affirmative vote of the holders of two-thirds of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon.

(4) Upon the adoption of such resolution, a statement of intent to dissolve shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary and shall set forth:

(a) the name of the corporation;

(b) the names and respective addresses of its officers;

(c) the names and respective addresses of its directors;

(d) a copy of the resolution adopted by the shareholders authorizing the dissolution of the corporation;

(e) the number of shares outstanding and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class; and

(f) the number of shares voted for and against the resolution, respectively, and if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against the resolution, respectively.

History: En. Sec. 77, Ch. 300, L. 1967; R.C.M. 1947, 15-2277; amd. Sec. 24, Ch. 131, L. 1983; amd. Sec. 21, Ch. 174, L. 1983.

Cross-References

Notice of shareholders' meetings, 35-1-502.

35-1-904. Filing of statement of intent to dissolve. One original and one copy of the statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, he shall, when all fees have been paid as in this chapter prescribed:

(1) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(2) file the original in his office; and

(3) return the copy to the corporation or its representative.

History: En. Sec. 78, Ch. 300, L. 1967; R.C.M. 1947, 15-2278; amd. Sec. 25, Ch. 131, L. 1983.

35-1-905. Effect of statement of intent to dissolve. Upon the filing by the secretary of state of a statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, the corporation shall cease to carry on its business, except insofar as may be necessary for the winding up thereof, but its corporate existence shall continue until a certificate of dissolution has been issued by the secretary of state or until a decree dissolving the corporation has been entered by a court of competent jurisdiction as in this chapter provided.

History: En. Sec. 79, Ch. 300, L. 1967; R.C.M. 1947, 15-2279.

35-1-906. Procedure after filing of statement of intent to dissolve — notice to creditors — liquidation. After the filing by the secretary of state of a statement of intent to dissolve:

(1) The corporation shall immediately cause notice thereof to be mailed to each known creditor of the corporation.

(2) The corporation shall proceed to:

(a) collect its assets;

(b) convey and dispose of such of its properties as are not to be distributed in kind to its shareholders;

(c) pay, satisfy, and discharge its liabilities and obligations and do all other acts required to liquidate its business and affairs; and

(d) after paying or adequately providing for the payment of all its obligations, distribute the remainder of its assets either in cash or in kind among its shareholders according to their respective rights and interests.

(3) The corporation, at any time during the liquidation of its business and affairs, may make application to a court of competent jurisdiction within the state and judicial subdivision in which the registered office or principal place of business of the corporation is situated to have the liquidation continued under the supervision of the court as provided in this chapter.

History: **En. Sec. 80, Ch. 300, L. 1967; R.C.M. 1947, 15-2280.**

Cross-References

Liability of directors on dissolution, 35-1-409.

Shareholders' right to dissent, 35-1-810.

35-1-907. Revocation of voluntary dissolution proceedings by consent of shareholders. (1) By the written consent of all of its shareholders, a corporation may, at any time prior to the issuance of a certificate of dissolution by the secretary of state, revoke voluntary dissolution proceedings theretofore taken in the following manner:

(2) Upon the execution of such written consent, a statement of revocation of voluntary dissolution proceedings shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary and shall set forth:

(a) the name of the corporation;

(b) the names and respective addresses of its officers;

(c) the names and respective addresses of its directors;

(d) a copy of the written consent signed by all shareholders of the corporation revoking such voluntary dissolution proceedings; and

(e) that such written consent has been signed by all shareholders of the corporation or signed in their names by their attorneys thereunto duly authorized.

History: **En. Sec. 81, Ch. 300, L. 1967; R.C.M. 1947, 15-2281; amd. Sec. 26, Ch. 131, L. 1983; amd. Sec. 22, Ch. 174, L. 1983.**

35-1-908. Revocation of voluntary dissolution proceedings by act of corporation. By the act of the corporation, a corporation may, at any time prior to the issuance of a certificate of dissolution by the secretary of state, revoke voluntary dissolution proceedings theretofore taken in the following manner:

(1) The board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked and directing that the question of such revocation be submitted to a vote at a special meeting of shareholders.

(2) Written notice stating that the purpose or one of the purposes of such meeting is to consider the advisability of revoking the voluntary dissolution proceedings shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of special meetings of shareholders.

(3) At such meeting a vote of the shareholders entitled to vote thereat shall be taken on a resolution to revoke the voluntary dissolution proceedings, which shall require for its adoption the affirmative vote of the holders of two-thirds of the shares entitled to vote thereon.

(4) Upon the adoption of such resolution, a statement of revocation of voluntary dissolution proceedings shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary and shall set forth:

(a) the name of the corporation;

(b) the names and respective addresses of its officers;

(c) the names and respective addresses of its directors;

(d) a copy of the resolution adopted by the shareholders revoking the voluntary dissolution proceedings;

(e) the number of shares outstanding; and

(f) the number of shares voted for and against the resolution, respectively.

History: En. Sec. 82, Ch. 300, L. 1967; R.C.M. 1947, 15-2282; amd. Sec. 27, Ch. 131, L. 1983; amd. Sec. 23, Ch. 174, L. 1983.

Cross-References

Notice of shareholders' meeting, 35-1-502.

35-1-909. Filing of statement of revocation of voluntary dissolution proceedings. One original and one copy of the statement of revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of the corporation, shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, he shall, when all fees have been paid as in this chapter prescribed:

(1) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(2) file the original in his office; and

(3) return the copy to the corporation or its representative.

History: En. Sec. 83, Ch. 300, L. 1967; R.C.M. 1947, 15-2283; amd. Sec. 28, Ch. 131, L. 1983.

Cross-References

Filing fees, 35-1-1202.

35-1-910. Effect of statement of revocation of voluntary dissolution proceedings. Upon the filing by the secretary of state of a statement of revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of the corporation, the revocation of the voluntary dissolution proceedings shall become effective and the corporation may again carry on its business.

History: En. Sec. 84, Ch. 300, L. 1967; R.C.M. 1947, 15-2284.

35-1-911. Articles of dissolution. If voluntary dissolution proceedings have not been revoked, then when all debts, liabilities, and obligations of the corporation have been paid and discharged or adequate provision has been made therefor and all of the remaining property and assets of the corporation have been distributed to its shareholders, articles of dissolution shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary and shall set forth:

(1) the name of the corporation;

(2) that the secretary of state has theretofore filed a statement of intent to dissolve the corporation and the date on which such statement was filed;

(3) that all debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor;

(4) that all the remaining property and assets of the corporation have been distributed among its shareholders in accordance with their respective rights and interests;

(5) that there are no suits pending against the corporation in any court or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit; and

(6) that all taxes imposed on the corporation under Title 15 have been paid, supported by a certificate issued by the department of revenue as required by 35-1-928.

History: En. Sec. 85, Ch. 300, L. 1967; amd. Sec. 2, Ch. 152, L. 1969; amd. Sec. 3, Ch. 391, L. 1973; R.C.M. 1947, 15-2285(part); amd. Sec. 29, Ch. 131, L. 1983; amd. Sec. 24, Ch. 174, L. 1983; amd. Sec. 4, Ch. 445, L. 1985.

Cross-References

Corporation license or income tax, Title 15, ch. 31.

Filing fees, 35-1-1202.

Appeal from failure of approval of articles of dissolution, 35-1-1304.

35-1-912. Filing of articles of dissolution — issuance of certificate of dissolution — effect. (1) One original and one copy of such articles of dissolution shall be delivered to the secretary of state. If the secretary of state finds that such articles of dissolution conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(b) file the original in his office; and

(c) issue a certificate of dissolution to which he shall affix the copy.

(2) The certificate of dissolution, together with the copy of the articles of dissolution affixed thereto by the secretary of state, shall be returned to the representative of the dissolved corporation. Upon the issuance of such certificate of dissolution, the existence of the corporation shall cease, except for the purpose of suits, other proceedings, and appropriate corporate action by shareholders, directors, and officers as provided in this chapter.

History: En. Sec. 86, Ch. 300, L. 1967; R.C.M. 1947, 15-2286; amd. Sec. 30, Ch. 131, L. 1983.

Cross-References

Filing fees, 35-1-1202.

Filing of articles of dissolution — nonprofit corporations, 35-2-706.

35-1-913 through 35-1-920 reserved.

35-1-921. Power of court to liquidate assets and business of corporation — venue. (1) The district courts shall have full power to liquidate the assets and business of a corporation:

(a) in an action by a shareholder when it is established that:

(i) the directors are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock and that irreparable injury to the corporation is being suffered or is threatened by reason thereof;

(ii) the acts of the directors or those in control of the corporation are illegal, oppressive, or fraudulent;

(iii) the shareholders are deadlocked in voting power and have failed for a period which includes at least two consecutive annual meeting dates to elect successors to directors whose terms have expired or would have expired upon the election of their successors; or

(iv) the corporate assets are being misapplied or wasted;

(b) in an action by a creditor when:

(i) the claim of the creditor has been reduced to judgment and an execution thereon returned unsatisfied and it is established that the corporation is insolvent; or

(ii) the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent;

(c) upon application by a corporation which has filed a statement of intent to dissolve, as provided in this chapter, to have its liquidation continued under the supervision of the court;

(d) when a corporation has been dissolved by the secretary of state and it is established that liquidation of its business and affairs is necessary;

(e) upon filing a verified petition and/or application by a stockholder, director, or creditor of any corporation which was dissolved under any corporation laws which were in effect prior to December 31, 1968, if such dissolved corporation has or may after December 31, 1968, be found to have any property, property rights, or other assets, including money, which have not been distributed to creditors and/or shareholders legally entitled to the same.

(2) Proceedings under this section shall be brought in the county in which the registered office or the principal office of the corporation is situated.

(3) It shall not be necessary to make shareholders parties to any such action or proceeding unless relief is sought against them personally.

History: En. Sec. 90, Ch. 300, L. 1967; amd. Sec. 1, Ch. 174, L. 1969; amd. Sec. 7, Ch. 455, L. 1977; R.C.M. 1947, 15-2290.

Cross-References

Appointment of receivers, 27-20-102.

Quo warranto proceedings, Title 27, ch. 28.

Defense of ultra vires, 35-1-110.

Actions by shareholders, 35-1-514.

Power to liquidate nonprofit corporations, 35-2-711.

Involuntary dissolution — procedure, 35-6-104.

Reinstatement of dissolved corporation, 35-6-201.

35-1-922. Procedure in liquidation of corporation by court. (1) In proceedings to liquidate the assets and business of a corporation, the court shall have power to issue injunctions, to appoint a receiver or receivers pendente lite with such powers and duties as the court from time to time may direct, and to take such other proceedings as may be requisite to preserve the corporate assets wherever situated and carry on the business of the corporation until a full hearing can be had.

(2) After a hearing had upon such notice as the court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation, including all amounts owing to the corporation by shareholders on account of any unpaid portion of the consideration for the issuance of shares. Such liquidating receiver or

receivers shall have authority, subject to the order of the court, to sell, convey, and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The assets of the corporation or the proceeds resulting from a sale, conveyance, or other disposition thereof shall be applied to the expenses of such liquidation and to the payment of the liabilities and obligations of the corporation, and any remaining assets or proceeds shall be distributed among its shareholders according to their respective rights and interests. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings.

(3) The court shall have power to allow from time to time, as expenses of the liquidation, compensation to the receiver or receivers and to attorneys in the proceeding and to direct the payment thereof out of the assets of the corporation or the proceeds of any sale or disposition of such assets.

(4) A receiver of a corporation appointed under the provisions of this section shall have authority to sue and defend in all courts in his own name as receiver of such corporation. The court appointing such receiver shall have exclusive jurisdiction of the corporation and its property, wherever situated.

History: En. Sec. 91, Ch. 300, L. 1967; R.C.M. 1947, 15-2291.

Cross-References

Receivers, Title 27, ch. 20.

Quo warranto, Title 27, ch. 28.

Liquidation of nonprofit corporations by court, 35-2-712.

35-1-923. Qualifications and bond of receivers. A receiver shall in all cases be a citizen of the United States or a corporation authorized to act as receiver, which corporation may be a domestic corporation or a foreign corporation authorized to transact business in this state, and shall in all cases give such bond as the court may direct with such sureties as the court may require.

History: En. Sec. 92, Ch. 300, L. 1967; R.C.M. 1947, 15-2292.

Cross-References

Receivers, Title 27, ch. 20.

Quo warranto, Title 27, ch. 28.

Suretyship, Title 28, ch. 11, part 4.

35-1-924. Filing of claims in liquidation proceedings. In proceedings to liquidate the assets and business of a corporation, the court may require all creditors of the corporation to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs under oath of their respective claims. If the court requires the filing of claims, it shall fix a date, which shall be not less than 4 months from the date of the order, as the last day for the filing of claims and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the court may extend the time for the filing of claims. Creditors and claimants failing to file proofs of claim on or before the date so fixed may be barred by order of court from participating in the distribution of the assets of the corporation.

History: En. Sec. 93, Ch. 300, L. 1967; R.C.M. 1947, 15-2293.

Cross-References

Receivers, Title 27, ch. 20.

Quo warranto, Title 27, ch. 28.

35-1-925. Discontinuance of liquidation proceedings. The liquidation of the assets and business of a corporation may be discontinued at any time during the liquidation proceedings when it is established that cause for liquidation no longer exists. In such event the court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets.

History: En. Sec. 94, Ch. 300, L. 1967; R.C.M. 1947, 15-2294.

Cross-References

Receivers, Title 27, ch. 20.

Quo warranto, Title 27, ch. 28.

35-1-926. Decree of involuntary dissolution in proceedings to liquidate. In proceedings to liquidate the assets and business of a corporation, when the costs and expenses of such proceedings and all debts, obligations, and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed to its shareholders or, in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts, and obligations, when all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease. In the event the proceedings are under subsection (1)(e) of 35-1-921, the court shall make an order and decree of final distribution and liquidation, discharging the receiver appointed and also discharging all surviving directors of such dissolved corporation from their duties and responsibilities as trustees for the creditors and/or for stockholders of such corporation.

History: En. Sec. 95, Ch. 300, L. 1967; amd. Sec. 2, Ch. 174, L. 1969; R.C.M. 1947, 15-2295.

Cross-References

Receivers, Title 27, ch. 20.

Quo warranto, Title 27, ch. 28.

35-1-927. Filing of decree of dissolution. In case the court shall enter a decree dissolving a corporation, it shall be the duty of the clerk of such court to cause a certified copy of the decree to be filed with the secretary of state. No fee shall be charged by the secretary of state for the filing thereof.

History: En. Sec. 96, Ch. 300, L. 1967; R.C.M. 1947, 15-2296.

Cross-References

Receivers, Title 27, ch. 20.

Quo warranto, Title 27, ch. 28.

35-1-928. State tax clearance certificate. No decree of voluntary dissolution shall be made and entered by any court, nor shall the clerk of the district court of any county or secretary of state file any such decree or file any other document by which the term of existence of any corporation is terminated, except a decree of involuntary dissolution in an action brought by the secretary of state, nor shall the secretary of state file any application for a certificate of withdrawal by a foreign corporation of its right to do intrastate business in the state unless the corporation obtains from the department of revenue and files with said court, clerk of the district court, or secretary of state, as part of the original instrument effecting the dissolution or withdrawal, a certificate to the effect the department of revenue is satisfied from the available evidence that all taxes imposed by Title 15 have been paid. The issuance of the certificate shall not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana.

History: **En. Sec. 85, Ch. 300, L. 1967; amd. Sec. 2, Ch. 152, L. 1969; amd. Sec. 3, Ch. 391, L. 1973; R.C.M. 1947, 15-2285(part); amd. Sec. 2, Ch. 202, L. 1979; amd. Sec. 152, Ch. 575, L. 1981; amd. Sec. 5, Ch. 445, L. 1985.**

Cross-References

Withdrawal of foreign corporation, 35-1-1017.

35-1-929. Deposit of amount due certain shareholders upon voluntary or involuntary dissolution. Upon the voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to a creditor or shareholder who is unknown or cannot be found or who is under disability and there is no person legally competent to receive such distributive portion shall be reduced to cash and deposited with the state treasurer and shall be paid over to such creditor or shareholder or to his legal representative upon proof satisfactory to the state treasurer of his right thereto or shall be disposed of by the state treasurer in the manner provided by law.

History: **En. Sec. 97, Ch. 300, L. 1967; R.C.M. 1947, 15-2297.**

35-1-930. Survival of remedy after dissolution — continuance of corporate existence for certain purposes. (1) The dissolution of a corporation either by the issuance of a certificate of dissolution by the secretary of state or by a decree of court when the court has not liquidated the assets and business of the corporation as provided in this chapter or by expiration of its period of duration shall not take away or impair any remedy available to or against such corporation, its directors, officers, or shareholders for any right or claim existing or any liability incurred prior to such dissolution if action or other proceeding thereon is commenced within 5 years after the date of such dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The shareholders, directors, and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right, or claim. If such corporation was dissolved by the expiration of its period of duration, such corporation may amend its articles of incorporation at any time during such period of 5 years so as to extend its period of duration.

(2) Whenever any such corporation is the owner of real or personal property or claims any interest or lien whatsoever in any real or personal property, such corporation shall continue to exist during such 5-year period for the purpose of conveying, transferring, and releasing such real or personal property or interest or lien therein, and such corporation shall continue after the expiration of such 5-year period to exist as a body corporate for the purpose of being made a party to and being sued in any action, suit, or proceeding against it involving the title to any such real or personal property or any interest therein and not otherwise. Any such action, suit, or proceeding may be instituted and maintained against any such corporation as might have been had prior to the expiration of said 5-year period. This section shall not be construed as affecting or suspending any statute of limitations applicable to any suit, action, or proceeding instituted hereunder.

(3) For the purpose of service of any process, notice, or demand within the prescribed time following such dissolution, the secretary of state shall be an agent of the dissolved corporation upon whom service may be made in the manner prescribed in the Montana Rules of Civil Procedure.

History: **En. Sec. 98, Ch. 300, L. 1967; R.C.M. 1947, 15-2298.**

Cross-References

Service of process on Secretary of State, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Survival of remedy for nonprofit corporation after dissolution, 35-2-719.

Part 10

Foreign Corporations

35-1-1001. Admission of foreign corporation. (1) No foreign corporation may transact business in this state until it procures a certificate of authority to do so from the secretary of state.

(2) No foreign corporation shall be entitled to procure a certificate of authority under this chapter to transact in this state any business which a corporation organized under this chapter is not permitted to transact.

(3) A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state or country under which such corporation is organized governing its organization and internal affairs differ from the laws of this state, and nothing in this chapter shall be construed to authorize this state to regulate the organization or the internal affairs of such corporation.

History: **En. Sec. 99, Ch. 300, L. 1967; amd. Sec. 2, Ch. 66, L. 1977; R.C.M. 1947, 15-2299(1).**

Cross-References

Foreign nonprofit corporations, Title 35, ch. 2, part 8.

Classification of business trusts as foreign, 35-5-102.

35-1-1002. Activities not to be considered transacting business. Without excluding other activities which may not constitute transacting business in this state, a foreign corporation shall not be considered to be transacting business in this state for the purposes of this chapter by reason of carrying on in this state any one or more of the following activities:

(1) maintaining or defending any action or suit or any administrative or arbitration proceeding or effecting the settlement thereof or the settlement of claims or disputes;

(2) holding meetings of its directors or shareholders or carrying on other activities concerning its internal affairs;

(3) maintaining bank accounts;

(4) maintaining offices or agencies for the transfer, exchange, and registration of its securities or appointing and maintaining trustees or depositaries with relation to its securities;

(5) effecting sales through independent contractors;

(6) soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance without this state before becoming binding contracts;

(7) creating, as borrower or lender, or acquiring indebtedness or mortgages or other security interests in real or personal property;

(8) securing or collecting debts or enforcing any rights in property securing the same;

(9) transacting any business in interstate commerce;

(10) conducting an isolated transaction completed within a period of 30 days and not in the course of a number of repeated transactions of like nature.

History: **En. Sec. 99, Ch. 300, L. 1967; amd. Sec. 2, Ch. 66, L. 1977; R.C.M. 1947, 15-2299(2); amd. Sec. 51, Ch. 475, L. 1981.**

Cross-References

U.C.C. — investment securities, Title 30, ch. 8.

Securities Act of Montana, Title 30, ch. 10.

35-1-1003. Application to corporations previously authorized to transact business in this state. Foreign corporations which are duly authorized to transact business in this state on December 31, 1968, for a purpose or purposes for which a corporation might secure such authority under this chapter shall, subject to the limitations set forth in their respective certificates of authority, be entitled to all the rights and privileges applicable to foreign corporations procuring certificates of authority to transact business in this state under this chapter, and from December 31, 1968, such corporations shall be subject to all the limitations, restrictions, liabilities, and duties prescribed herein for foreign corporations procuring certificates of authority to transact business in this state under this chapter.

History: **En. Sec. 116, Ch. 300, L. 1967; R.C.M. 1947, 15-22-116.**

Cross-References

Sale of assets, 35-1-808, 35-1-809.

Sale of nonprofit corporate assets, 35-2-607.

Foreign nonprofit corporations — activities not to be considered transacting business, 35-2-802.

Foreign corporations — rural cooperative utilities, 35-18-107.

35-1-1004. Transacting business without certificate — disabilities and liabilities. (1) No foreign corporation transacting business in this state without a certificate of authority shall be permitted to maintain any action, suit, or proceeding in any court in this state until such corporation shall have obtained a certificate of authority. Nor shall any action, suit, or proceeding be maintained in any court of this state by any successor or assignee of such corporation on any right, claim, or demand arising out of the transaction of business by such corporation in this state until a certificate of authority shall have been obtained by such corporation or by a corporation which has acquired all or substantially all of its assets.

(2) The failure of a foreign corporation to obtain a certificate of authority to transact business in this state shall not impair the validity of any contract or act of such corporation and shall not prevent such corporation from defending any action, suit, or proceeding in any court of this state.

(3) A foreign corporation which transacts business in this state without a certificate of authority shall be liable to this state, for the years or parts thereof during which it transacted business in this state without a certificate of authority, in an amount equal to all fees which would have been imposed by this chapter upon such corporation had it duly applied for and received a certificate of authority to transact business in this state as required by this

chapter and thereafter filed all reports required by this chapter, plus a penalty of $5 for each day it transacted business in this state without a certificate of authority. The total penalty shall not exceed $1,000. The county attorney for any county in which a foreign corporation is transacting business without a certificate of authority may bring proceedings to recover all amounts due this state under the provisions of this section. Any money collected in such proceedings shall be paid to the state general fund.

History: **En. Sec. 117, Ch. 300, L. 1967; R.C.M. 1947, 15-22-117; amd. Sec. 1, Ch. 583, L. 1983.**

Cross-References

Admission of foreign nonprofit corporation, 35-2-801.

Foreign nonprofit corporations — what constitutes conducting affairs, 35-2-802.

Effect of foreign nonprofit corporation conducting business without certificate, 35-2-803.

Foreign nonprofit corporations — effect of certificate, 35-2-809.

35-1-1005. Rights and duties of foreign corporation. A foreign corporation which shall have received a certificate of authority under this chapter shall, until a certificate of revocation or of withdrawal shall have been issued as provided in this chapter, enjoy the same but no greater rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which such certificate of authority is issued and, except as in this chapter otherwise provided, shall be subject to the same duties, restrictions, penalties, and liabilities imposed on or after December 31, 1968, upon a domestic corporation of like character.

History: **En. Sec. 100, Ch. 300, L. 1967; R.C.M. 1947, 15-22-100.**

Cross-References

Merger or consolidation of domestic and foreign corporations, 35-1-807.

License fees payable by foreign corporation, 35-1-1205.

35-1-1006. Corporate name of foreign corporation. No certificate of authority shall be issued to a foreign corporation unless the corporate name of such corporation:

(1) shall contain the word "corporation", "company", "incorporated", or "limited" or an abbreviation of one of such words or such corporation shall, for use in this state, add at the end of its name one of such words or an abbreviation thereof;

(2) shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation or that it is authorized or empowered to conduct the business of banking or insurance;

(3) shall not be the same as or deceptively similar to any assumed business name, limited partnership name, trademark, or service mark registered or reserved with the secretary of state or to the name of any domestic corporation existing under the laws of this state, any foreign corporation authorized to transact business in this state, or a name the exclusive right to which is at the time reserved in the manner provided in this chapter or the name of a corporation which has in effect a registration of its name as provided in this chapter, except that this provision does not apply if the foreign corporation applying for a certificate of authority files with the secretary of state any one of the following:

(a) a resolution of its board of directors adopting a fictitious name for use in transacting business in this state, which fictitious name is not deceptively similar to the name of any domestic corporation, to that of any foreign corporation authorized to transact business in this state, or to any name reserved or registered as provided in this chapter and which fictitious name is registered as an assumed business name under the provisions of Title 30, chapter 13, part 2;

(b) the written consent of such other corporation or holder of a reserved or registered name to use the same or a deceptively similar name and one or more words are added to make such name distinguishable from such other name; or

(c) a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the foreign corporation to the use of the name in this state.

History: En. Sec. 101, Ch. 300, L. 1967; R.C.M. 1947, 15-22-101; amd. Sec. 52, Ch. 475, L. 1981; amd. Sec. 4, Ch. 456, L. 1983.

Cross-References

Assumed business names, Title 30, ch. 13, part 2.

Exclusivity of corporate name, 30-13-202.

When registration of assumed business name by foreign corporation or foreign limited partnership prohibited, 30-13-205.

Trade and service marks, Title 30, ch. 13, part 3.

Business corporation, corporate name, Title 35, ch. 1, part 3.

Nonprofit corporation, corporate name, 35-2-301.

Foreign nonprofit corporation, corporate name, 35-2-805, 35-2-806.

Business trust name, 35-5-201.

Acquisition of new name by dissolved corporation upon reinstatement, 35-6-203.

Restrictions on limited partnership names, 35-12-505.

Rural cooperative utility names, 35-18-201.

35-1-1007. Change of name by foreign corporation. Whenever a foreign corporation which is authorized to transact business in this state shall change its name to one under which a certificate of authority would not be granted to it on application therefor, the certificate of authority of such corporation shall be suspended and it shall not thereafter transact any business in this state until it has changed its name to a name which is available to it under the laws of this state or has otherwise complied with the provisions of 35-1-1006.

History: En. Sec. 102, Ch. 300, L. 1967; R.C.M. 1947, 15-22-102; amd. Sec. 53, Ch. 475, L. 1981.

35-1-1008. Application for a certificate of authority. (1) A foreign corporation, in order to procure a certificate of authority to transact business in this state, shall make application therefor to the secretary of state, which application shall set forth:

(a) the name of the corporation and the state or country under the laws of which it is incorporated;

(b) if the name of the corporation does not contain the word "corporation", "company", "incorporated", or "limited" or an abbreviation of one of such words, then the name of the corporation with the word or abbreviation which it elects to add thereto for use in this state;

(c) the date of incorporation and the period of duration of the corporation;

(d) the address, including street and number, if any, of the principal office of the corporation in the state or country under the laws of which it is incorporated;

(e) the address of the registered office of the corporation in this state and the name of its registered agent in this state at such address;

(f) the purpose or purposes of the corporation which it proposes to pursue in the transaction of business in this state;

(g) the names and respective addresses of the directors and officers of the corporation;

(h) a statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes and series, if any, within a class;

(i) a statement of the aggregate number of issued shares, itemized by classes and series, if any, within a class; and

(j) such additional information as may be necessary or appropriate in order to enable the secretary of state to determine whether such corporation is entitled to a certificate of authority to transact business in this state and to determine and assess the fees payable.

(2) Such application shall be made on forms prescribed and furnished by the secretary of state and shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary.

History: En. Sec. 103, Ch. 300, L. 1967; R.C.M. 1947, 15-22-103; amd. Sec. 54, Ch. 475, L. 1981; amd. Sec. 31, Ch. 131, L. 1983; amd. Sec. 25, Ch. 174, L. 1983.

Cross-References

Filing fees, 35-1-1202.

Foreign nonprofit corporations — application for certificate, 35-2-807.

Creating instrument — filing — consent of foreign business trust to laws and service of process, 35-5-201.

35-1-1009. Filing of application — issuance of certificate of authority. (1) One original and one copy of the application of the corporation for a certificate of authority shall be delivered to the secretary of state, together with a copy of its articles of incorporation and all amendments thereto, duly authenticated by the proper officer of the state or country of incorporation.

(2) If the secretary of state finds that such application conforms to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof; and

(b) file in his office the original of the application and the copy of the articles of incorporation and amendments thereto; and

(c) issue a certificate of authority to transact business in this state to which he shall affix the copy of the application.

(3) The certificate of authority, together with the copy of the application affixed thereto by the secretary of state, shall be returned to the corporation or its representative.

History: En. Sec. 104, Ch. 300, L. 1967; amd. Sec. 3, Ch. 152, L. 1969; R.C.M. 1947, 15-22-104; amd. Sec. 55, Ch. 475, L. 1981; amd. Sec. 32, Ch. 131, L. 1983.

Cross-References

Filing fees, 35-1-1202.

Foreign nonprofit corporations — application for certificate, 35-2-807.

Foreign nonprofit corporations — filing of certificate, 35-2-808.

35-1-1010. Effect of certificate of authority. Upon the issuance of a certificate of authority by the secretary of state, the corporation shall be authorized to transact business in this state for those purposes set forth in its application, subject, however, to the right of this state to suspend or to revoke such authority as provided in this chapter.

History: En. Sec. 105, Ch. 300, L. 1967; R.C.M. 1947, 15-22-105.

Cross-References

Appeal from failure of approval of certificate, 35-1-1304, 35-2-1103.

Foreign nonprofit corporations — effect of certificate, 35-2-809.

35-1-1011. Amended certificate of authority. (1) A foreign corporation authorized to transact business in this state shall procure an amended certificate of authority in the event it changes its corporate name or desires to pursue in this state other or additional purposes than those set forth in its prior application for a certificate of authority by making application therefor to the secretary of state.

(2) The requirements in respect to the form and contents of such application, the manner of its execution, the filing of one original and one copy with the secretary of state, the issuance of an amended certificate of authority and the effect thereof shall be the same as in the case of an original application for a certificate of authority.

History: En. Sec. 111, Ch. 300, L. 1967; R.C.M. 1947, 15-22-111; amd. Sec. 33, Ch. 131, L. 1983.

Cross-References

Foreign nonprofit corporations — amended certificate, 35-2-810.

35-1-1012. Registered office and registered agent of foreign corporation. Each foreign corporation authorized to transact business in this state shall have and continuously maintain in this state:

(1) a registered office which may be but need not be the same as its place of business in this state;

(2) a registered agent, which agent may be either an individual resident in this state whose business office is identical with such registered office or a domestic corporation or a foreign corporation authorized to transact business in this state having a business office identical with such registered office.

History: En. Sec. 106, Ch. 300, L. 1967; R.C.M. 1947, 15-22-106.

Cross-References

Foreign nonprofit corporations — registered office and agent, 35-2-811.

35-1-1013. Change of registered office or registered agent of foreign corporation. (1) A foreign corporation authorized to transact business in this state may change its registered office or change its registered agent, or both, upon filing in the office of the secretary of state a statement setting forth:

(a) the name of the corporation;

(b) the address, including street and number, if any, of its then registered office;

(c) if the address of its registered office be changed, the address, including street and number, if any, to which the registered office is to be changed;

(d) the name of its then registered agent;

(e) if its registered agent be changed, the name of its successor registered agent;

(f) that the address, including street and number, if any, of its registered office and the address of the business office of its registered agent, as changed, will be identical; and

(g) that such change was authorized by resolution duly adopted by its board of directors.

(2) Such statement shall be executed for the corporation by any officer thereof and delivered to the secretary of state. If the secretary of state finds that such statement conforms to the provisions of this chapter, he shall file such statement in his office and, upon such filing, the change of address of the registered office or the appointment of a new registered agent, or both, as the case may be, shall become effective.

(3) A registered agent of a foreign corporation may resign as registered agent upon executing a written notice of resignation and filing one original and one copy with the secretary of state, who shall immediately mail a copy thereof to the corporation at its registered office. The appointment of the agent shall terminate 30 days after receipt of such notice by the secretary of state.

(4) If a registered agent changes his or its business address to another place within the same county, he or it may change such address and the address of the registered office of any corporations of which he or it is registered agent by filing a statement as required above, except that it need be signed only by the registered agent and need not be responsive to (1)(e) or (1)(g) and must recite that a copy of the statement has been mailed to each such corporation.

History: En. Sec. 107, Ch. 300, L. 1967; R.C.M. 1947, 15-22-107; amd. Sec. 34, Ch. 131, L. 1983; amd. Sec. 26, Ch. 174, L. 1983.

Cross-References

Change, 35-1-306.

Change for nonprofit corporations, 35-2-303.

Change for foreign nonprofit corporations, 35-2-812.

35-1-1014. Service of process on foreign corporation. Service of process upon a foreign corporation shall be effected upon the persons and in the manner provided by the Montana Rules of Civil Procedure.

History: En. Sec. 108, Ch. 300, L. 1967; R.C.M. 1947, 15-22-108.

Cross-References

Service of process, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

35-1-1015. Filing required for amended articles of incorporation. Whenever the articles of incorporation of a foreign corporation authorized to transact business in this state are amended, such foreign corporation shall, within 60 days after such amendment becomes effective, file in the office of the secretary of state a copy of such amendment, duly certified by the proper officer of the state or country under the laws of which it is incorporated, but the filing thereof shall not of itself enlarge or alter the purpose or purposes which such corporation is authorized to pursue in the transaction of business in this state or authorize such corporation to transact business in this state under any other name than the name set forth in its certificate of authority.

History: En. Sec. 109, Ch. 300, L. 1967; amd. Sec. 4, Ch. 152, L. 1969; R.C.M. 1947, 15-22-109; amd. Sec. 56, Ch. 475, L. 1981.

35-1-1016. Filing required when foreign corporation is party to a merger. Whenever a foreign corporation authorized to transact business in this state shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is incorporated and such corporation shall be the surviving corporation, it shall, within 60 days after such merger becomes effective, file with the secretary of state a copy of the articles of merger duly certified by the proper officer of the state or country under the laws of which such statutory merger was effected. It shall not be necessary for such corporation to procure either a new or amended certificate of authority to transact business in this state unless the name of such corporation be changed thereby or unless the corporation desires to pursue in this state other or additional purposes than those which it is then authorized to transact in this state.

History: En. Sec. 110, Ch. 300, L. 1967; amd. Sec. 5, Ch. 152, L. 1969; R.C.M. 1947, 15-22-110.

Cross-References

Filing fees, 35-1-1202.

Foreign nonprofit corporation as party to merger — filing, 35-2-815.

35-1-1017. Withdrawal of foreign corporation. (1) A foreign corporation authorized to transact business in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure such certificate of withdrawal, the foreign corporation shall deliver to the secretary of state an application for withdrawal, which shall set forth:

(a) the name of the corporation and the state or country under the laws of which it is incorporated;

(b) that the corporation is not transacting business in this state;

(c) that the corporation surrenders its authority to transact business in this state;

(d) that the corporation revokes the authority of its registered agent in this state to accept service of process and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in this state during the time the corporation was authorized to transact business in this state may thereafter be made on such corporation by service thereof on the secretary of state;

(e) a post-office address, including street and number, if any, to which the secretary of state may mail a copy of any process against the corporation that may be served on him;

(f) a statement of the aggregate number of shares which the corporation has authority to issue, itemized by class and series, if any, within each class, as of the date of such application;

(g) a statement of the aggregate number of issued shares, itemized by class and series, if any, within each class, as of the date of such application;

(h) that all taxes imposed on the corporation by Title 15 have been paid, supported by a certificate by the department of revenue to be attached to said application to the effect that the department is satisfied from the available evidence that all such taxes imposed have been paid. The issuance of such certificate does not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana; and

(i) such additional information as may be necessary or appropriate to enable the secretary of state to determine and assess any unpaid fees or taxes payable by such foreign corporation as prescribed by this chapter.

(2) The application for withdrawal shall be made on forms prescribed and furnished by the secretary of state and shall be executed for the corporation by its president or a vice-president and by its secretary or an assistant secretary or, if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by such receiver or trustee.

History: En. Sec. 112, Ch. 300, L. 1967; amd. Sec. 4, Ch. 391, L. 1973; R.C.M. 1947, 15-22-112; amd. Sec. 3, Ch. 202, L. 1979; amd. Sec. 57, Ch. 475, L. 1981; amd. Sec. 27, Ch. 174, L. 1983.

Cross-References

Tax clearance certificate required for withdrawal from state, 35-1-928.

Filing fees, 35-1-1202.

Withdrawal of foreign nonprofit corporations, 35-2-816.

35-1-1018. Filing of application for withdrawal — issuance of certificate of withdrawal — effect. (1) One original and one copy of such application for withdrawal shall be delivered to the secretary of state. If the secretary of state finds that such application conforms to the provisions of this chapter, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(b) file the original in his office; and

(c) issue a certificate of withdrawal to which he shall affix the copy.

(2) The certificate of withdrawal, together with the copy of the application for withdrawal affixed thereto by the secretary of state, shall be returned to the corporation or its representative. Upon the issuance of such certificate of withdrawal, the authority of the corporation to transact business in this state shall cease.

History: En. Sec. 113, Ch. 300, L. 1967; R.C.M. 1947, 15-22-113; amd. Sec. 35, Ch. 131, L. 1983.

Cross-References

Filing fees, 35-1-1202.

Foreign nonprofit corporations — application for and issuance of certificate of withdrawal, 35-2-817, 35-2-819.

35-1-1019. Revocation of certificate of authority. (1) The certificate of authority of a foreign corporation to transact business in this state may be revoked by the secretary of state upon the conditions prescribed in this section when:

(a) the corporation has failed to file its annual report within the time required by this chapter or has failed to pay any fees prescribed by this chapter when they have become due and payable;

(b) the corporation has failed to appoint and maintain a registered agent in this state as required by this chapter;

(c) the corporation has failed, after change of its registered office or registered agent, to file in the office of the secretary of state a statement of such change as required by this chapter;

(d) the corporation has failed to file in the office of the secretary of state any amendment to its articles of incorporation or any articles of merger within the time prescribed by this chapter; or

(e) a misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation pursuant to this chapter.

(2) No certificate of authority of a foreign corporation shall be revoked by the secretary of state unless:

(a) he shall have given the corporation not less than 60 days' notice thereof by mail addressed to its registered office in this state; and

(b) the corporation shall fail prior to revocation to file such annual report or pay such fees or file the required statement of change of registered agent or registered office or file such articles of amendment or articles of merger or correct such misrepresentation.

History: **En. Sec. 114, Ch. 300, L. 1967; R.C.M. 1947, 15-22-114.**

Cross-References

Foreign nonprofit corporation — revocation of certificate, 35-2-818.

35-1-1020. Issuance of notice of revocation — effect. (1) Upon revoking any such certificate of authority, the secretary of state shall:

(a) issue a notice of revocation in duplicate;

(b) file one of such notices in his office;

(c) mail to such corporation at its registered office in this state the duplicate notice of revocation.

(2) Upon the issuance of such notice of revocation, the authority of the corporation to transact business in this state shall cease.

History: **En. Sec. 115, Ch. 300, L. 1967; R.C.M. 1947, 15-22-115; amd. Sec. 5, Ch. 456, L. 1983.**

Cross-References

Foreign nonprofit corporation — effect of revocation, 35-2-819.

35-1-1021 through 35-1-1024 reserved.

35-1-1025. Filing of a facsimile copy. (1) The secretary of state may treat a facsimile copy of a document that is required to be filed under this part and the signatures on the facsimile copy in the same manner as an original for purposes of this part, provided that he receives the original document within 5 working days of the receipt of the facsimile copy. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy. A facsimile copy may be filed under this section if it:

(a) is produced by a method of transmission of images in which the image is scanned at the transmitter, reconstructed at the receiving station, and duplicated on paper at the receiving station; and

(b) is legible and the same size as the original.

(2) During the 5-day period referred to in subsection (1), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.

(3) If the original document is not received within 5 working days of receipt of the facsimile copy as provided in subsection (1), the filing of the facsimile copy is void.

(4) A person who files a false document by facsimile copy is liable to the party aggrieved for three times the amount of damages resulting from the filing of the false document.

History: **En. Sec. 4, Ch. 273, L. 1989.**

Part 11

Annual Reports

35-1-1101. Annual report of domestic and foreign corporations. (1) Each domestic corporation and each foreign corporation authorized to transact business in Montana shall file, within the time prescribed by this chapter, an annual report stating:

(a) the name of the corporation and the state or country under the laws of which it is incorporated;

(b) the address of the registered office of the corporation in Montana and the name of its registered agent in Montana at that address, including street and number, if any, and, in the case of a foreign corporation, the address, including street and number, if any, of its principal office in the state or country under the laws of which it is incorporated;

(c) briefly the character of the business in which the corporation is actually engaged in Montana;

(d) the names and respective addresses, including street and number, if any, of the directors and officers of the corporation;

(e) the aggregate number of shares which the corporation has authority to issue, itemized by class and series, if any, within each class; and

(f) the aggregate number of issued shares, itemized by class and series, if any, within each class.

(2) Each foreign corporation shall also include a statement, expressed in dollars, of the value of all the property owned by the corporation, wherever located, and the value of the property of the corporation located within Montana and a statement, expressed in dollars, of the gross amount of business transacted by the corporation for the 12 months ended on December 31 preceding the date provided in this section for the filing of the report and the gross amount thereof transacted by the corporation at or from places of business in Montana. If on December 31 preceding the time provided in this section for the filing of the report the corporation had not been authorized to transact business in Montana for 12 months, the statement with respect to business transacted must be furnished for the period between the date of its authorization to transact business in Montana and December 31. If all the property of the corporation is located in Montana and all of its business is transacted at or from places of business in Montana, the information required by this subsection need not be reported.

(3) The annual report must be on forms or in a computerized format prescribed by the secretary of state, and the information therein contained must be given as of the date of the execution of the report, which must be executed by the corporation by its president, a vice-president, secretary, an assistant

secretary, or treasurer, or if the corporation is in the hands of a receiver or trustee, it must be executed on behalf of the corporation by the receiver or trustee.

History: En. Sec. 118, Ch. 300, L. 1967; R.C.M. 1947, 15-22-118; amd. Sec. 4, Ch. 202, L. 1979; amd. Sec. 58, Ch. 475, L. 1981; amd. Sec. 28, Ch. 174, L. 1983; amd. Sec. 1, Ch. 153, L. 1989.

Compiler's Comments

1989 Amendment: Throughout section substituted "Montana" for "this state"; near beginning of (3) inserted "or in a computerized format"; and made minor changes in grammar and style.

Cross-References

Business corporation law — applicability, 35-1-103.

Annual reports — nonprofit corporations, 35-2-901.

False financial statements — theft — deceptive practices, 45-6-301, 45-6-317.

35-1-1102. Filing of annual report of domestic and foreign corporations. (1) Such annual report of a domestic or foreign corporation shall be delivered to the secretary of state between January 1 and April 15 of each year, except that the first annual report of a domestic or foreign corporation shall be filed between January 1 and April 15 of the year next succeeding the calendar year in which its certificate of incorporation or its certificate of authority, as the case may be, was issued by the secretary of state. Proof to the satisfaction of the secretary of state that prior to April 15 such report was deposited in the United States mail in a sealed envelope, properly addressed with postage prepaid, shall be deemed a compliance with this requirement.

(2) If the secretary of state finds that such report conforms to the requirements of this chapter, he shall file the same. If he finds that it does not so conform, he shall promptly return the same to the corporation for any necessary corrections. The penalties prescribed for failure to file such report within the time provided shall not apply if such report is corrected to conform to the requirements of this chapter and returned to the secretary of state within 30 days from the date on which it was mailed to the corporation by the secretary of state.

History: En. Sec. 119, Ch. 300, L. 1967; amd. Sec. 1, Ch. 6, L. 1971; R.C.M. 1947, 15-22-119.

Cross-References

Filing fees, 35-1-1202.

Nonprofit corporations' annual reports, 35-2-902.

Grounds for involuntary dissolution — failure to file, 35-6-102.

35-1-1103. Penalty for failure to file annual report. Each corporation, domestic or foreign, that has failed to file its annual report within the time required by this chapter and fails or refuses to file its annual report within 30 days after the secretary of state has mailed to the corporation at its registered office a demand that such report be filed shall be guilty of a misdemeanor and upon conviction thereof may be fined in any amount not exceeding $500.

History: En. Sec. 125, Ch. 300, L. 1967; R.C.M. 1947, 15-22-125.

Cross-References

Foreign nonprofit corporations — grounds for revocation of certificate of authority, 35-2-818.

Failure as grounds for involuntary dissolution, 35-6-102.

Part 12

Fees and Charges

35-1-1201. Fees and charges to be collected by secretary of state. (1) The secretary of state shall by administrative rule establish, charge, and collect in accordance with the provisions of this chapter and commensurate with costs:

(a) fees for filing documents and issuing certificates;

(b) miscellaneous charges.

(2) The secretary of state shall maintain records sufficient to support the fees and miscellaneous charges established under this part.

History: En. Sec. 120, Ch. 300, L. 1967; R.C.M. 1947, 15-22-120; amd. Sec. 2, Ch. 156, L. 1987.

Cross-References

Fees relating to nonprofit corporations, 35-2-1001, 35-2-1002.

Fees relating to limited partnerships, 35-12-521.

35-1-1202. Secretary of state to establish fees commensurate with costs. The secretary of state shall establish fees for filing documents and issuing certificates as required by this chapter. The fees must be reasonably related to the costs of processing the documents and certificates. The secretary of state shall maintain records sufficient to support the fees established under this section.

History: En. Sec. 121, Ch. 300, L. 1967; amd. Sec. 6, Ch. 152, L. 1969; R.C.M. 1947, 15-22-121; amd. Sec. 59, Ch. 475, L. 1981.

35-1-1203. Miscellaneous charges. The secretary of state shall charge and collect:

(1) for furnishing a certified copy of any document, instrument, or paper relating to a corporation, 50 cents per page and $2 for the certificate and affixing the seal thereto;

(2) for furnishing any certificate not mentioned in this or the preceding section, $5.

History: En. Sec. 122, Ch. 300, L. 1967; amd. Sec. 1, Ch. 185, L. 1971; R.C.M. 1947, 15-22-122.

35-1-1204. License fees payable by domestic corporation. (1) The secretary of state shall charge and collect from each domestic corporation license fees, based upon the number of shares which it will have authority to issue or the increase in the number of shares which it will have authority to issue, at the time of:

(a) filing articles of incorporation;

(b) filing articles of amendment increasing the number of authorized shares; and

(c) filing articles of merger or consolidation increasing the number of authorized shares which the surviving or new corporation, if a domestic corporation, will have authority to issue above the aggregate number of shares which the constituent domestic corporations and constituent foreign corporations authorized to transact business in this state had authority to issue.

(2) The license fees shall be at the rate of 10 cents per share up to and including the first 1,000 authorized shares, 8 cents per share for each authorized share in excess of 1,000 shares up to and including 2,500 shares, 6 cents

per share for each authorized share in excess of 2,500 shares up to and including 5,000 shares, 4 cents per share for each authorized share in excess of 5,000 shares up to and including 10,000 shares, and 2 cents per share for each authorized share in excess of 10,000 shares.

(3) For the sole purpose of computing the license fee:

(a) with respect to shares having a par value, each $100 unit of the authorized shares shall be counted as one taxable share;

(b) with respect to shares without nominal or par value, such shares shall be deemed equivalent to shares having a par value of $1 each.

(4) However, such license fee shall in no event be less than $50.

(5) The license fees payable on an increase in the number of authorized shares shall be imposed only on the increased number of shares, and the number of previously authorized shares shall be taken into account in determining the rate applicable to the increased number of authorized shares.

History: En. Sec. 123, Ch. 300, L. 1967; R.C.M. 1947, 15-22-123.

35-1-1205. License fees payable by foreign corporation. (1) The secretary of state shall charge and collect from each foreign corporation at the time of filing an application for a certificate of authority to transact business in this state the sum of $50 as an initial license fee.

(2) Thereafter the secretary of state shall fix the license fee for each foreign corporation as follows:

(a) He shall first ascertain the license fee which a newly organized domestic corporation would be required to pay under the preceding section if it had authorized shares in an amount equal to the number of authorized shares of the reporting foreign corporation shown by its filed annual report.

(b) Said amount shall be multiplied by a fraction, the numerator of which shall be the sum of the value of the property of the corporation located in this state and the gross receipts of the corporation derived from its business transacted within this state, and the denominator of which shall be the sum of the value of all of its property wherever located and the gross receipts of the corporation derived from its business wherever transacted. The amounts used in determining the numerator and denominator shall be determined from the corporation's filed annual report.

(c) From the product of such multiplication, there shall be deducted the aggregate amount of license fee theretofore paid by the corporation and the remainder, if any, shall be the amount of additional fee to be paid by the corporation.

(3) The secretary of state shall enter the amount of any additional license fee in the records of the corporation in his office and shall mail a notice of the amount of such additional license fee to the corporation at its registered office in this state. The additional license fee shall be paid by the corporation to the secretary of state within 30 days after the mailing of the notice. Failure to pay such additional license fee within said 30-day period shall render such corporation liable to the secretary of state for a penalty equal to 10% of the amount of the additional license fee, together with interest at the rate of ½ of 1% per month on the fee plus penalty until paid.

(4) Foreign corporations which entered Montana for the transaction of business prior to December 31, 1968, shall be entitled to employ within this

state an amount of capital equal to the greatest amount employed in the state during the period of their qualification prior to December 31, 1968, without the payment of additional fees.

History: **En. Sec. 124, Ch. 300, L. 1967; R.C.M. 1947, 15-22-124; amd. Sec. 60, Ch. 475, L. 1981.**

Cross-References

Fees for business trusts, 35-5-205.

Part 13

Secretary of State

35-1-1301. Powers of secretary of state. The secretary of state shall have the power and authority reasonably necessary to enable him to administer this chapter efficiently and to perform the duties therein imposed upon him.

History: **En. Sec. 127, Ch. 300, L. 1967; R.C.M. 1947, 15-22-127.**

35-1-1302. Secretary of state to notify corporation of expiration of existence. It shall be the duty of the secretary of state to notify every corporation organized after July 1, 1929, not less than 3 months or more than 6 months before the date of the expiration of its corporate existence, that its corporate existence is about to expire, which notice shall be given by registered or certified letter addressed to such corporation at its principal place of business, as it appears from the last annual report.

History: **En. Sec. 128, Ch. 300, L. 1967; R.C.M. 1947, 15-22-128.**

35-1-1303. Forms to be prescribed by secretary of state. All reports required by this chapter to be filed in the office of the secretary of state shall be made in a form which shall be prescribed by the secretary of state.

History: **En. Sec. 131, Ch. 300, L. 1967; R.C.M. 1947, 15-22-131.**

Cross-References

Forms for nonprofit corporations, 35-2-1102.

35-1-1304. Appeal from secretary of state. (1) If the secretary of state shall fail to approve any articles of incorporation, amendment, merger, consolidation, or dissolution or any other document required by this chapter to be approved by the secretary of state before the same shall be filed in his office, he shall within 10 days after the delivery thereof to him give written notice of his disapproval to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefor.

(2) From such disapproval such person or corporation may appeal to the district court of the county in which the registered office of such corporation is or is proposed to be situated or in the district court of Lewis and Clark County, by filing with the clerk of such court a petition setting forth a copy of the articles or other document sought to be filed and a copy of the written disapproval thereof by the secretary of state, whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the secretary of state or direct him to take such action as the court may deem proper.

(3) If the secretary of state shall revoke the certificate of authority to transact business in this state of any foreign corporation pursuant to the

provisions of this chapter, such foreign corporation may likewise appeal to the district court of the county where the registered office of such corporation in this state is situated or in the district court of Lewis and Clark County, by filing with the clerk of such court a petition setting forth a copy of its certificate of authority to transact business in this state and a copy of the notice of revocation given by the secretary of state, whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the secretary of state or direct him to take such action as the court may deem proper.

(4) Appeals from all final orders and judgments entered by the district court under this section in review of any ruling or decision of the secretary of state may be taken as in other civil actions.

History: En. Sec. 129, Ch. 300, L. 1967; R.C.M. 1947, 15-22-129.

Cross-References

Contested cases, Title 2, ch. 4, part 6.

Judicial review of contested cases, Title 2, ch. 4, part 7.

Nonprofit corporations — appeal, 35-2-1103.

35-1-1305. Duty of secretary of state to certify copy of articles or amendments. The secretary of state shall upon request certify a copy of the articles of incorporation or the articles of incorporation as restated or any amendments to either thereof.

History: En. Sec. 58, Ch. 300, L. 1967; R.C.M. 1947, 15-2258(part).

Cross-References

Articles of incorporation, 35-1-202.

Articles of amendment, 35-1-209.

Restated articles of incorporation, 35-1-213.

Foreign corporations — same duty, 35-2-1104.

35-1-1306. Certificates and certified copies issued and filed by secretary of state as prima facie evidence of contents. All certificates issued by the secretary of state in accordance with the provisions of this chapter and all copies of documents filed in his office in accordance with the provisions of this chapter when certified by him shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated. A certificate by the secretary of state under the great seal of this state as to the existence or nonexistence of the facts relating to corporations, which would appear from the presence or absence of documents filed in his office or the compliance or noncompliance with the provisions of this chapter, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated.

History: En. Sec. 130, Ch. 300, L. 1967; R.C.M. 1947, 15-22-130.

Cross-References

Foreign corporations and certified copies — nonprofit corporations, 35-2-1105.

Religious corporations sole — certificate of incorporation, 35-3-203.

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Chapter Cross-References

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Part 1

General

35-2-101. Short title. This chapter shall be known and may be cited as the "Montana Nonprofit Corporation Act".

History: En. Sec. 1, Ch. 198, L. 1967; R.C.M. 1947, 15-2301.

35-2-102. Definitions. As used in this chapter, unless the context otherwise requires, the following terms apply:

(1) "Corporation" or "domestic corporation" means a nonprofit corporation subject to the provisions of this chapter, except a foreign corporation.

(2) "Foreign corporation" means a nonprofit corporation organized under laws other than the laws of this state.

(3) "Nonprofit corporation" means a corporation, no part of the income or profit of which is distributable to its members, directors, or officers.

(4) "Articles of incorporation" means the original or restated articles of incorporation or articles of consolidation and all amendments thereto, including articles of merger.

(5) "Bylaws" means the code or codes of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name or names by which the rules are designated.

(6) "Member" means one's having membership rights in a corporation in accordance with the provisions of its articles of incorporation or bylaws.

(7) "Board of directors" means the group of persons vested with the management of the affairs of the corporation irrespective of the name by which the group is designated.

(8) "Insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its affairs.

(9) (a) "Filed with the secretary of state" is considered to be the time of receipt of a document by him if he subsequently finds that it conforms to law. The finding relates back to the time of receipt, but receipt by the secretary of state may not of itself constitute "filing" under this chapter.

(b) The secretary of state may treat a facsimile copy of a document and the signatures on the facsimile copy in the same manner as an original for purposes of subsection (9)(a), provided that he receives the original document within 5 working days of the receipt of the facsimile copy. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy. A facsimile copy may be filed under subsection (9)(a) if it:

(i) is produced by a method of transmission of images in which the image is scanned at the transmitter, reconstructed at the receiving station, and duplicated on paper at the receiving station; and

(ii) is legible and the same size as the original.

(c) During the 5-day period referred to in subsection (9)(b), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.

(d) If the original document is not received within 5 working days of receipt of the facsimile copy as provided in subsection (9)(b), the filing of the facsimile copy is void.

(e) A person who files a false document by facsimile copy is liable to the party aggrieved for three times the amount of damages resulting from the filing of the false document.

History: En. Sec. 2, Ch. 198, L. 1967; R.C.M. 1947, 15-2302; amd. Sec. 3, Ch. 273, L. 1989.

Compiler's Comments

1989 Amendment: Inserted (9)(b) through (9)(e) relating to filing of documents by facsimile copy; and made minor changes in form and phraseology.

35-2-103. Applicability. (1) The provisions of this chapter relating to domestic corporations shall apply to:

(a) all corporations organized hereunder;

(b) all nonprofit corporations heretofore organized under any act hereby repealed for a purpose or purposes for which a corporation might be organized under this chapter.

(2) The provisions of this chapter relating to foreign corporations shall apply to all foreign nonprofit corporations conducting affairs in this state for a purpose or purposes for which a corporation might be organized under this chapter.

History: En. Sec. 3, Ch. 198, L. 1967; R.C.M. 1947, 15-2303(part).

Cross-References

Merged or consolidated corporations, 35-2-606.

Activities not to be considered conducting affairs, 35-2-802.

Rights and duties of foreign corporations, 35-2-804.

Foreign corporations sole, 35-3-102.

35-2-104. Repeal of prior act not to affect rights accrued or liabilities incurred. The repeal of a prior act by this chapter shall not affect any right accrued or established or any liability or penalty incurred under the provisions of such act prior to the repeal thereof.

History: En. Sec. 96, Ch. 198, L. 1967; R.C.M. 1947, 15-2396.

Cross-References

Nonmunicipal corporations, Art. XIII, sec. 1, Mont. Const.

Business corporations — repeal of prior act not to affect rights accrued or liabilities incurred, 35-1-105.

35-2-105. Reservation of power. The legislature shall at all times have power to prescribe such regulations, provisions, and limitations as it may deem advisable, which regulations, provisions, and limitations shall be binding upon any and all corporations subject to the provisions of this chapter, and the legislature shall have power to amend, repeal, or modify this chapter at pleasure.

History: **En. Sec. 95, Ch. 198, L. 1967; R.C.M. 1947, 15-2395.**

Cross-References

Business corporations — reservation of power, 35-1-106.

Business corporations — permissible purposes for incorporation, 35-1-107.

35-2-106. Permissible purposes for incorporation. Corporations may be organized under this chapter for any lawful purpose or purposes.

History: **En. Sec. 4, Ch. 198, L. 1967; amd. Sec. 106, Ch. 349, L. 1974; amd. Sec. 24, Ch. 319, L. 1975; R.C.M. 1947, 15-2304.**

35-2-107. General powers. Each corporation shall have power:

(1) to continue to exist perpetually by its corporate name unless a limited period of duration is stated in its articles of incorporation;

(2) to sue and be sued, complain and defend, in its corporate name;

(3) to have a corporate seal which may be altered at pleasure and to use the same by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced;

(4) to purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, own, hold, improve, use, and otherwise deal in and with real or personal property, or any interest therein, wherever situated;

(5) to sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;

(6) to lend money to its employees other than its officers and directors and otherwise assist its employees, officers, and directors;

(7) to purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of and otherwise use and deal in and with shares or other interests in or obligations of other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships, or individuals or direct or indirect obligations of the United States or of any other government, state, territory, governmental district, or municipality or of any instrumentality thereof;

(8) to make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and income;

(9) to lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested;

(10) to conduct its affairs, carry on its operations, and have offices and exercise the powers granted by this chapter in any state, territory, district, or possession of the United States or in any foreign country;

(11) to elect or appoint officers and agents of the corporation, who may be directors or members, and define their duties and fix their compensation;

(12) to make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the corporation;

(13) unless otherwise provided in the articles of incorporation, to make donations for the public welfare or for charitable, religious, scientific, or educational purposes;

(14) to indemnify any director or officer or former director or officer of the corporation or any person who may have served at its request as a director or officer of another corporation in which it owns shares of capital stock or of which it is a creditor against claims, liabilities, expenses, and costs necessarily incurred by him in connection with the defense, compromise, or settlement of any action, suit, or proceeding, civil or criminal, in which he is made a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit, or proceeding to be liable for negligence or misconduct in the performance of duty to the corporation; to make any other indemnification that shall be authorized by the articles of incorporation or by any bylaw or resolution adopted by the members after notice;

(15) to pay pensions and retirement benefits and establish pension plans, pension trusts, insurance plans, and incentive plans for any or all of its directors, officers, and employees;

(16) to cease its corporate activities and surrender its corporate franchise;

(17) to have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

History: **En. Sec. 5, Ch. 198, L. 1967; R.C.M. 1947, 15-2305.**

Cross-References

General powers of business corporations, 35-1-108.

Loans to employees and directors, 35-1-415.

Bylaws, 35-2-211.

Election of officers, 35-2-409.

Removal of officers, 35-2-410.

No power to make loans to directors and officers, 35-2-412.

Voting, 35-2-507.

Sale or other disposition of assets, 35-2-607.

Voluntary dissolution, 35-2-701.

Powers of corporation sole, 35-3-205.

35-2-108. Shares of stock and dividends prohibited. A corporation shall not have or issue shares of stock. No dividend shall be paid and no part of the income or profit of a corporation shall be distributed to its members, directors, or officers. A corporation may pay compensation in a reasonable amount to its members, directors, or officers for services rendered, may confer benefits upon its members in conformity with its purposes, and upon dissolution or final liquidation may make distributions to its members as permitted by this chapter, and no such payment, benefit, or distribution shall be deemed to be a dividend or a distribution of income or profit.

History: **En. Sec. 26, Ch. 198, L. 1967; R.C.M. 1947, 15-2326.**

Cross-References

Distribution of assets on dissolution and liquidation, 35-2-702, 35-2-712.

35-2-109. Unauthorized assumption of corporate powers. All persons who assume to act as a corporation without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof.

History: **En. Sec. 94, Ch. 198, L. 1967; R.C.M. 1947, 15-2394.**

Cross-References

Foreign corporations sole, 35-3-102.

35-2-110. Defense of ultra vires. No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation is invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

(1) in a proceeding by a member or a director against the corporation to enjoin the doing or continuation of unauthorized acts or the transfer of real or personal property by or to the corporation. If the unauthorized acts or transfer sought to be enjoined are being or are to be performed pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it considers the same to be equitable, set aside and enjoin the performance of such contract and in so doing may allow to the corporation or the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract may not be awarded by the court as a loss or damage sustained.

(2) in a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative or through members in a representative suit against the officers or directors of the corporation for exceeding their authority;

(3) in a proceeding by the secretary of state or the attorney general, as provided in chapter 6, to dissolve the corporation or in a proceeding by the attorney general to enjoin the corporation from performing unauthorized acts or in any other proceeding by the attorney general.

History: En. Sec. 6, Ch. 198, L. 1967; R.C.M. 1947, 15-2306; amd. Sec. 5, Ch. 202, L. 1979.

Cross-References

Business corporations — defense of ultra vires, 35-1-110.

Power of court to liquidate assets and affairs of corporation, 35-2-711.

Activities not to be considered conducting affairs, 35-2-802.

Conducting affairs without certificate of authority, 35-2-803.

35-2-111. Waiver of notice. Whenever any notice is required to be given to any member or director of a corporation under the provisions of this chapter or under the provisions of the articles of incorporation or bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

History: En. Sec. 92, Ch. 198, L. 1967; R.C.M. 1945, 15-2392.

Cross-References

Notice of directors' meetings, 35-2-403.

35-2-112. Federal tax laws. In the absence of an express provision to the contrary in its articles of incorporation, a corporation organized at any time under this chapter, which is a private foundation as defined in section 509 of the Internal Revenue Code of 1954 as in effect on March 28, 1974, during the period it is a private foundation:

(1) shall not engage in any act of self-dealing as defined in section 4941(d) thereof;

(2) shall distribute its income for each taxable year at such time and in such manner as not to become subject to the tax on undistributed income imposed by section 4942 thereof;

(3) shall not retain any excess business holdings as defined in section 4943(c) thereof;

(4) shall not make any investment in such manner as to subject it to tax under section 4944 thereof;

(5) shall not make any taxable expenditure as defined in section 4945(d) thereof.

History: **En. 15-2398 by Sec. 2, Ch. 332, L. 1974; R.C.M. 1947, 15-2398.**

Cross-References

Taxes on golf courses owned by Montana nonprofit corporation, 15-6-134.

Tax exempt property, Title 15, ch. 6, part 2.

Tax exempt property categories, 15-6-201.

Exempt securities, 30-10-104.

Part 2

Formation — Articles of Incorporation — Bylaws

Part Cross-References

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.

Formation of religious corporations sole, Title 35, ch. 3, part 2.

Organization of professional service corporations, Title 35, ch. 4, part 2.

Formation and operation of business trusts, Title 35, ch. 5, part 2.

Formation of limited partnerships, Title 35, ch. 12, part 6.

Formation of mining partnerships, Title 35, ch. 13, part 1.

Formation, articles of incorporation, and bylaws of cooperative associations, Title 35, ch. 15, part 2.

Formation of agricultural associations, Title 35, ch. 16, part 2.

Formation of cooperative agricultural marketing associations, Title 35, ch. 17, part 2.

Formation, articles, and bylaws of rural cooperative utilities, Title 35, ch. 18, part 2.

Formation of cemetery associations, Title 35, ch. 20, part 1.

Organization of mausoleum and columbarium authorities, Title 35, ch. 21, part 2.

35-2-201. Incorporators. One or more persons may incorporate a corporation by signing and delivering one original and one copy of articles of incorporation to the secretary of state. But no subordinate body shall be incorporated unless such action is approved in writing by the grand head or national body in accordance with its applicable rules and such approval or certified copy thereof is attached to the articles of incorporation submitted to the secretary of state.

History: **En. Sec. 28, Ch. 198, L. 1967; R.C.M. 1947, 15-2328; amd. Sec. 36, Ch. 131, L. 1983.**

Cross-References

Directors and officers, Title 35, ch. 2, part 4.

Fees, 35-2-1001.

35-2-202. Articles of incorporation — control over bylaws. (1) The articles of incorporation shall set forth:

(a) the name of the corporation;

(b) the period of duration, which may be perpetual;

(c) the purpose or purposes for which the corporation is organized;

(d) any provisions, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision for distribution of assets on dissolution or final liquidation;

(e) the address, including street and number, if any, of its initial registered office and the name of its initial registered agent at such address;

(f) the number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as the initial directors;

(g) the name and address of each incorporator.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-202(2)(a)(v).

(3) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

(4) Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the bylaws shall be controlling. In all other cases, whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling.

History: En. Sec. 29, Ch. 198, L. 1967; R.C.M. 1947, 15-2329; amd. Sec. 1, Ch. 78, L. 1979; amd. Sec. 2, Ch. 559, L. 1987.

Cross-References

Number, election, and term of directors, 35-2-402.

35-2-203. Articles of incorporation — filing — issuance of certificate of incorporation. (1) One original and one copy of the articles of incorporation shall be delivered to the secretary of state. If the secretary of state finds that the articles of incorporation conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(b) file the original in his office; and

(c) issue a certificate of incorporation to which he shall affix the copy.

(2) The certificate of incorporation, together with the copy of the articles of incorporation affixed thereto by the secretary of state, shall be returned to the incorporators or their representative.

History: En. Sec. 30, Ch. 198, L. 1967; R.C.M. 1947, 15-2330; amd. Sec. 37, Ch. 131, L. 1983.

Cross-References

Amended articles to be filed — foreign corporations, 35-2-814.

Fees, 35-2-1001.

35-2-204. Effect of issuance of certificate of incorporation. Upon the issuance of the certificate of incorporation, the corporate existence shall begin and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this chapter, except as against the state in a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the corporation.

History: En. Sec. 31, Ch. 198, L. 1967; R.C.M. 1947, 15-2331.

Cross-References

Certificates as prima facie evidence, 35-2-1105.

Religious corporations sole, 35-3-203.

35-2-205. Organization meeting of directors. (1) After the issuance of the certificate of incorporation, an organization meeting of the board of directors named in the articles of incorporation shall be held, either within or without this state, at the call of a majority of incorporators for the purpose of adopting bylaws, electing officers, and the transaction of such other business as may come before the meeting. The incorporators calling the meeting shall give at least 3 days' notice thereof by mail to each director so named, which notice shall state the time and place of the meeting.

(2) A first meeting of the members may be held at the call of the directors or a majority of them upon at least 3 days' notice for such purposes as shall be stated in the notice of the meeting.

History: En. Sec. 32, Ch. 198, L. 1967; R.C.M. 1947, 15-2332.

Cross-References

Place and notice of directors' meetings, 35-2-403.

Meetings of members, 35-2-502.

35-2-206. Power to amend articles of incorporation. A corporation may amend its articles of incorporation from time to time in any and as many respects as may be desired, so long as its articles of incorporation as amended contain only such provisions as are lawful under this chapter.

History: En. Sec. 33, Ch. 198, L. 1967; R.C.M. 1947, 15-2333.

35-2-207. Procedure to amend articles of incorporation. (1) Amendments to the articles of incorporation shall be made in the following manner:

(a) If there are members entitled to vote thereon, the board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members. The proposed amendment shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast.

(b) If there are no members or no members entitled to vote thereon, an amendment shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

(2) Any number of amendments may be submitted and voted upon at any one meeting.

History: En. Sec. 34, Ch. 198, L. 1967; R.C.M. 1947, 15-2334.

Cross-References

Notice of members' meetings, 35-2-503.

35-2-208. Articles of amendment. The articles of amendment shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary and shall set forth:

(1) the name of the corporation;

(2) the amendment so adopted;

(3) if there are members entitled to vote thereon:

(a) a statement setting forth the date of the meeting of members at which the amendment was adopted, that a quorum was present at such meeting, and that such amendment received at least two-thirds of the votes which members present at such meeting or represented by proxy were entitled to cast; or

(b) a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto; and

(4) if there are no members or no members entitled to vote thereon, a statement of such fact, the date of the meeting of the board of directors at which the amendment was adopted, and a statement of the fact that such amendment received the vote of a majority of the directors in office.

History: En. Sec. 35, Ch. 198, L. 1967; R.C.M. 1947, 15-2335; amd. Sec. 38, Ch. 131, L. 1983.

35-2-209. Articles of amendment — filing — issuance of certificate of amendment — effect of issuance. (1) One original and one copy of the articles of amendment shall be delivered to the secretary of state. If the secretary of state finds that the articles of amendment conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(b) file the original in his office; and

(c) issue a certificate of amendment to which he shall affix the copy.

(2) The certificate of amendment, together with the copy of the articles of amendment affixed thereto by the secretary of state, shall be returned to the corporation or its representative.

(3) Upon the issuance of the certificate of amendment by the secretary of state, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

(4) No amendment shall affect any existing cause of action in favor of or against such corporation or any pending action to which such corporation shall be a party or the existing rights of persons other than members. In the event the corporate name shall be changed by amendment, no action brought by or against such corporation under its former name shall abate for that reason.

History: En. Sec. 36, Ch. 198, L. 1967; R.C.M. 1947, 15-2336; amd. Sec. 39, Ch. 131, L. 1983.

Cross-References

Fees, 35-2-1001.

Certificates as prima facie evidence, 35-2-1105.

35-2-210. Restated articles of incorporation. (1) A corporation may, by action taken in the same manner as required for amendment of articles of incorporation, adopt restated articles of incorporation. The restated articles of incorporation may contain any changes in the articles of incorporation that could be made by amendment regularly adopted. Adoption of restated articles of incorporation containing any such changes shall have the effect of amending the existing articles of incorporation to conform to the restated articles of incorporation, without further action of the board of directors or members. Restated articles of incorporation shall contain a statement that they supersede the theretofore existing articles of incorporation and amendments thereto. Restated articles of incorporation shall contain all the statements required by this chapter to be included in original articles of incorporation except that:

(a) in lieu of setting forth the address of the initial registered office and the name of the initial registered agent at such address, there shall be set forth the address, including street and number, if any, of the registered office and the name of the registered agent at such address at the time of the adoption of the restated articles of incorporation; and

(b) no statement need be made with respect to the names, number, or addresses of directors constituting the initial board of directors or the names and addresses of the incorporators.

(2) Restated articles of incorporation when executed and filed in the manner prescribed in this chapter for articles of amendment shall supersede the theretofore existing articles of incorporation and amendments thereto.

(3) The restated articles of incorporation when filed shall be accompanied by one original and one copy of a statement executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary setting forth the following:

(a) the name of the corporation;

(b) the date of the adoption of the restated articles of incorporation by the members, but if there are no members or no members entitled to vote thereon, that the restated articles were adopted at a meeting of the board of directors upon receiving an affirmative vote of a majority of the directors in office; and

(c) that the restated articles correctly set forth the provisions of the articles of incorporation as theretofore amended and that they have been duly adopted as required by law.

History: En. Sec. 37, Ch. 198, L. 1967; R.C.M. 1947, 15-2337(part); amd. Sec. 2, Ch. 78, L. 1979; amd. Sec. 40, Ch. 131, L. 1983; amd. Sec. 6, Ch. 445, L. 1985.

Cross-References

Articles of incorporation, 35-2-202.

Fees, 35-2-1001.

Duty of Secretary of State to certify articles, 35-2-1104.

35-2-211. Bylaws. The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend, or repeal the bylaws or adopt new bylaws shall be vested in the board of directors unless otherwise provided in the articles of incorporation or the bylaws. The bylaws may contain any provisions for the regulation and management of the affairs of a corporation not inconsistent with law or the articles of incorporation.

History: En. Sec. 12, Ch. 198, L. 1967; R.C.M. 1947, 15-2312.

Part 3

Corporate Name, Registered Office and Agent, and Service of Process

35-2-301. Corporate name. (1) The corporate name:

(a) must contain the word “corporation”, “company”, “incorporated”, or “limited” or an abbreviation of one of such words, unless one of such words or an abbreviation thereof is added at the end of the corporate name;

(b) shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation;

(c) shall not be the same as or deceptively similar to any assumed business name, limited partnership name, trademark, or service mark registered or reserved with the secretary of state or to the name of any corporation, whether for profit or not for profit, existing under the laws of this state or any foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this state or a corporate name reserved or registered as permitted by the laws of this state;

(d) shall be transliterated into letters of the English alphabet, if it is not in English.

(2) The exclusive right to the use of a corporate name may be reserved by filing in the office of the secretary of state an application to reserve a specified corporate name, executed by the applicant. If the secretary of state finds that such name is available for corporate use, he shall reserve the same for the exclusive use of such applicant for a period of 120 days.

(3) The right to the exclusive use of a specified corporate name so reserved may be assigned by filing in the office of the secretary of state a notice of such assignment, executed by the person for whom such name was reserved and specifying the name and address of the transferee.

History: En. Sec. 7, Ch. 198, L. 1967; R.C.M. 1947, 15-2307; amd. Sec. 6, Ch. 456, L. 1983.

Cross-References

Petition to change name of nonprofit corporation, 27-31-102.

Assumed business names, Title 30, ch. 13, part 2.

Exclusivity of corporate name, 30-13-202.

Trade and service marks, Title 30, ch. 13, part 3.

Business corporation, corporate name, Title 35, ch. 1, part 3.

Foreign corporation, corporate name, 35-1-1006.

Foreign nonprofit corporation, corporate name, 35-2-805, 35-2-806.

Reservation or transfer fee, 35-2-1001.

Business trust name, 35-5-201.

Acquisition of new name by dissolved corporation upon reinstatement, 35-6-203.

Restrictions on limited partnership names, 35-12-505.

Rural cooperative utility names, 35-18-201.

35-2-302. Registered office and registered agent. Each corporation shall have and continuously maintain in this state:

(1) a registered office which may be but need not be the same as its principal office;

(2) a registered agent, which agent may be either an individual resident in this state whose business office is identical with such registered office or a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this state, having an office identical with such registered office.

History: En. Sec. 8, Ch. 198, L. 1967; R.C.M. 1947, 15-2308.

Cross-References

Agency, Title 28, ch. 10.

35-2-303. Change of registered office or registered agent. (1) A corporation may change its registered office or change its registered agent, or both, upon filing in the office of the secretary of state a statement setting forth:

(a) the name of the corporation;

(b) the address of its then registered office;

(c) if the address of its registered office is to be changed, the address to which the registered office is to be changed;

(d) the name of its then registered agent;

(e) if its registered agent is to be changed, the name of its successor registered agent;

(f) that the address of its registered office and the address of the office of its registered agent, as changed, will be identical; and

(g) that such change was authorized by resolution duly adopted by its board of directors.

(2) Such statement shall be executed for the corporation by any officer thereof and delivered to the secretary of state. If the secretary of state finds that such statement conforms to the provisions of this chapter, he shall file such statement in his office, and upon such filing, the change of address of the registered office or the appointment of a new registered agent, or both, as the case may be, shall become effective.

(3) A registered agent of a corporation may resign as registered agent upon executing a written notice of resignation and filing one original and one copy with the secretary of state, who shall immediately mail a copy thereof to the corporation at its registered office. The appointment of the agent shall terminate 30 days after receipt of such notice by the secretary of state.

(4) If a registered agent changes his or its business address to another place within the same state, he or it may change such address and the address of the registered office of any corporations of which he or it is registered agent by filing a statement as required above except that it need be signed only by the registered agent and need not be responsive to (1)(e) or (1)(g) and must recite that a copy of the statement has been mailed to each such corporation.

History: En. Sec. 9, Ch. 198, L. 1967; R.C.M. 1947, 15-2309; amd. Sec. 41, Ch. 131, L. 1983.

Cross-References

Foreign corporation changes, 35-2-812.

Fees, 35-2-1001.

35-2-304. Service of process upon corporation. Service of process upon a corporation shall be effected upon the persons and in the manner provided by the Montana Rules of Civil Procedure.

History: En. Sec. 10, Ch. 198, L. 1967; R.C.M. 1947, 15-2310.

Cross-References

Service of process, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Merger or consolidation, 35-2-606.

Part 4

Directors and Officers

Part Cross-References

Directors and officers of business corporations, Title 35, ch. 1, part 4.

Shareholders, directors, and officers of cooperative associations, Title 35, ch. 15, part 3.

Members and directors of agricultural associations, Title 35, ch. 16, part 3.

Members, directors, and officers of cooperative agricultural marketing associations, Title 35, ch. 17, part 3.

Members, trustees, and officers of rural cooperative utilities, Title 35, ch. 18, part 3.

Trustees of cemetery associations, Title 35, ch. 20, part 2.

Governing board of mausoleum and columbarium associations, 35-21-205.

35-2-401. Board of directors. The affairs of a corporation shall be managed by a board of directors. Directors need not be residents of this state or members of the corporation unless the articles of incorporation or the bylaws so require. The articles of incorporation or the bylaws may prescribe other qualifications for directors.

History: En. Sec. 17, Ch. 198, L. 1967; R.C.M. 1947, 15-2317.

35-2-402. Number, election, and term of directors. (1) The number of directors of a corporation shall be not less than three. Subject to such limitation, the number of directors shall be fixed by the bylaws, except as to the number of the first board of directors which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to the bylaws, unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment of the articles of incorporation. No decrease in number shall have the effect of shortening the term of any incumbent director. In the absence of a bylaw fixing the number of directors, the number shall be the same as that stated in the articles of incorporation.

(2) The directors constituting the first board of directors shall be named in the articles of incorporation and shall hold office until the first annual election of directors or for such other period as may be specified in the articles of incorporation or the bylaws. Thereafter directors shall be elected or appointed in the manner and for the terms provided in the articles of incorporation or the bylaws. If a corporation has no members or its members have no right to vote, the directors shall be elected or appointed by the incumbent directors or by the dignitary, officer, or representative body of any organization or society designated in the articles of incorporation or bylaws.

(3) In the absence of a provision fixing the term of office, the term of office of a director shall be 1 year. Directors may be divided into classes and the terms of office of the several classes need not be uniform. Each director shall hold office for the term which he is elected or appointed and until his successor shall have been elected or appointed and qualified.

(4) A director may be removed from office pursuant to any procedure therefor provided in the articles of incorporation.

History: En. Sec. 18, Ch. 198, L. 1967; R.C.M. 1947, 15-2318.

35-2-403. Place and notice of directors' meetings. Meetings of the board of directors, regular or special, may be held either within or without this state and upon such notice as the bylaws may prescribe. Attendance of a director at any meeting shall constitute a waiver of notice of such meeting except when a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted nor the purpose of any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting.

History: En. Sec. 22, Ch. 198, L. 1967; R.C.M. 1947, 15-2322.

35-2-404. Quorum of directors — voting requirements. (1) A majority of the number of directors fixed by the bylaws or, in the absence of a bylaw fixing the number of directors, then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business unless otherwise provided in the articles of incorporation or the bylaws, but in no event shall a quorum consist of less than one-third of the number of directors so fixed or stated.

(2) The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors unless the act of a greater number is required by this chapter, the articles of incorporation, or the bylaws.

History: En. Sec. 20, Ch. 198, L. 1967; R.C.M. 1947, 15-2320.

Cross-References

When no members to vote, 35-2-508.

35-2-405. Articles or bylaws to control as to voting requirements. Whenever, with respect to any action to be taken by the directors of a corporation, the articles of incorporation or bylaws require the vote or concurrence of a greater proportion of the directors than required by this chapter, the provisions of the articles of incorporation or bylaws shall control.

History: En. Sec. 91, Ch. 198, L. 1967; R.C.M. 1947, 15-2391(part).

35-2-406. Action without a meeting. (1) Any action required by this chapter to be taken at a meeting of the directors of a corporation or any action which may be taken at a meeting of the directors may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the directors entitled to vote with respect to the subject matter thereof.

(2) Such consent shall have the same force and effect as a unanimous vote and may be stated as such in any articles or document filed with the secretary of state under this chapter.

History: En. Sec. 93, Ch. 198, L. 1967; R.C.M. 1947, 15-2393(part).

35-2-407. Committees. (1) If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the directors in office, may designate and appoint one or more committees each of which shall consist of two or more directors, which committees, to the extent provided in such resolution, in the articles of incorporation, or in the bylaws of the corporation, shall have and exercise all the authority of the board of directors, except that no such committee shall have the authority of the board of directors in reference to:

(a) amending, altering, or repealing the bylaws;

(b) electing, appointing, or removing any member of any such committee or any director or officer of the corporation;

(c) amending the articles of incorporation, restating articles of incorporation, adopting a plan of merger, or adopting a plan of consolidation with another corporation;

(d) authorizing the sale, lease, exchange, or mortgage of all or substantially all of the property and assets of the corporation;

(e) authorizing the voluntary dissolution of the corporation or revoking proceedings therefor;

(f) adopting a plan for the distribution of the assets of the corporation; or

(g) amending, altering, or repealing any resolution of the board of directors which by its terms provides that it shall not be amended, altered, or repealed by such committee.

(2) The designation and appointment of any such committee and the delegation thereto of authority shall not operate to relieve the board of directors or any individual director of any responsibility imposed upon it or him by law.

History: **En. Sec. 21, Ch. 198, L. 1967; R.C.M. 1947, 15-2321.**

35-2-408. Vacancies in board of directors. (1) Any vacancy occurring in the board of directors and any directorship to be filled by reason of an increase in the number of directors may be filled by the affirmative vote of a majority of the remaining directors, though less than a quorum of the board of directors, unless the articles of incorporation or the bylaws provide that a vacancy or directorship so created shall be filled in some other manner, in which case such provision shall control.

(2) A director elected or appointed, as the case may be, to fill a vacancy shall be elected or appointed for the unexpired term of his predecessor in office.

(3) Any directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors for a term of office continuing only until the next election of directors.

History: **En. Sec. 19, Ch. 198, L. 1967; R.C.M. 1947, 15-2319.**

35-2-409. Officers. (1) The officers of a corporation shall consist of a president, one or more vice-presidents, a secretary, a treasurer, and such other officers and assistant officers as may be deemed necessary, each of whom shall be elected or appointed at such time and in such manner and for such terms, not exceeding 3 years, as may be prescribed in the articles of incorporation or the bylaws. In the absence of any such provision, all officers shall be elected or appointed annually by the board of directors. If the bylaws so provide, any two or more offices may be held by the same person, except the offices of president and secretary.

(2) The articles of incorporation or the bylaws may provide that any one or more officers of the corporation shall be ex officio members of the board of directors.

(3) The officers of a corporation may be designated by such additional titles as may be provided in the articles of incorporation or the bylaws.

History: **En. Sec. 23, Ch. 198, L. 1967; R.C.M. 1947, 15-2323.**

35-2-410. Removal of officers. Any officer or agent may be removed by the persons authorized to elect or appoint such officer or agent whenever in their judgment the best interests of the corporation will be served thereby. The removal of an officer or agent shall be without prejudice to the contract rights, if any, of the officer or agent so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

History: **En. Sec. 24, Ch. 198, L. 1967; R.C.M. 1947, 15-2324.**

35-2-411. Nonliability of directors, officers, and employees. The directors, officers, and employees of the corporation shall not, as such, be liable on its obligations.

History: **En. Sec. 11, Ch. 198, L. 1967; R.C.M. 1947, 15-2311(part).**

35-2-412. Loans to directors and officers prohibited. No loans shall be made by a corporation to its directors or officers. Any director or officer who assents to or participates in the making of any such loan shall be liable to the corporation for the amount of such loan until the repayment thereof.

History: En. Sec. 27, Ch. 198, L. 1967; R.C.M. 1947, 15-2327.

35-2-413. Penalty imposed upon directors and officers for signing false document. Each director and officer of a corporation, domestic or foreign, who signs any articles, statement, report, application, or other document filed with the secretary of state which is known to such officer or director to be false in any material respect shall be deemed to be guilty of a misdemeanor and upon conviction thereof may be fined in any amount not exceeding $500.

History: En. Sec. 86, Ch. 198, L. 1967; R.C.M. 1947, 15-2386.

Cross-References

Penalty imposed upon officers and directors of business corporation for signing false documents, 35-1-412.

Filing articles, 35-2-203.

Filing amended articles, 35-2-209.

Articles of merger or consolidation, 35-2-604.

Articles of dissolution, 35-2-705.

Claims in liquidation proceedings, 35-2-714.

Filing of documents for foreign corporations, Title 35, ch. 2, part 8.

Part 5

Members

35-2-501. Members — classes — nonliability. (1) A corporation may have one or more classes of members or may have no members. If the corporation has one or more classes of members, the designation of such class or classes, the manner of election or appointment, and the qualifications and rights of the members of each class shall be set forth in the articles of incorporation or the bylaws. If the corporation has no members, that fact shall be set forth in the articles of incorporation or the bylaws.

(2) A corporation may issue certificates evidencing membership therein.

(3) The members of the corporation shall not, as such, be liable on its obligations.

History: En. Sec. 11, Ch. 198, L. 1967; R.C.M. 1947, 15-2311(part).

Cross-References

Survival of remedy after dissolution, 35-2-719.

35-2-502. Meetings of members. (1) Meetings of members may be held at such place, either within or without this state, as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held at the registered office of the corporation in this state.

(2) An annual meeting of the members shall be held at such time as may be provided in the bylaws. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation.

(3) Special meetings of the members may be called by the president or by the board of directors. Special meetings of the members may also be called by such other officers or persons or number or proportion of members as may be provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the number or proportion of members entitled to call a

meeting, a special meeting of members may be called by members having one-twentieth of the votes entitled to be cast at such meeting.

History: En. Sec. 13, Ch. 198, L. 1967; R.C.M. 1947, 15-2313.

35-2-503. Notice of members' meetings. Unless otherwise provided in the articles of incorporation or the bylaws, written notice stating the place, day, and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called shall be delivered not less than 10 or more than 50 days before the date of the meeting, either personally or by mail, by or at the direction of the president or the secretary or the officers or persons calling the meeting, to each member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the member at his address as it appears on the records of the corporation, with postage thereon prepaid.

History: En. Sec. 14, Ch. 198, L. 1967; R.C.M. 1947, 15-2314.

35-2-504. Quorum of members — voting requirements. (1) The bylaws may provide the number or percentage of members entitled to vote represented in person or by proxy or the number or percentage of votes represented in person or by proxy, which shall constitute a quorum at a meeting of members. In the absence of any such provision, members holding one-tenth of the votes entitled to be cast on the matter to be voted upon represented in person or by proxy shall constitute a quorum.

(2) A majority of the votes entitled to be cast on a matter to be voted upon by the members present or represented by proxy at a meeting at which a quorum is present shall be necessary for the adoption thereof unless a greater proportion is required by this chapter, the articles of incorporation, or the bylaws.

(3) Unless otherwise provided by the articles of incorporation or bylaws, the members present at a duly organized meeting may continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

(4) If a meeting cannot be organized because a quorum has not attended, those present may adjourn the meeting from time to time until a quorum is present, when any business may be transacted that may have been transacted at the meeting as originally called.

History: En. Sec. 16, Ch. 198, L. 1967; R.C.M. 1947, 15-2316.

35-2-505. Articles or bylaws to control as to voting requirements. Whenever, with respect to any action to be taken by the members of a corporation, the articles of incorporation or bylaws require the vote or concurrence of a greater proportion of the members than required by this chapter, the provisions of the articles of incorporation or bylaws shall control.

History: En. Sec. 91, Ch. 198, L. 1967; R.C.M. 1947, 15-2391(part).

35-2-506. Action without a meeting. (1) Any action required by this chapter to be taken at a meeting of the members of a corporation or any action which may be taken at a meeting of the members may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the members entitled to vote with respect to the subject matter thereof.

(2) Such consent shall have the same force and effect as a unanimous vote and may be stated as such in any articles or document filed with the secretary of state under this chapter.

History: **En. Sec. 93, Ch. 198, L. 1967; R.C.M. 1947, 15-2393(part).**

35-2-507. Voting — manner. (1) The right of the members or any class or classes of members to vote may be limited, enlarged, or denied to the extent specified in the articles of incorporation or the bylaws. Unless so limited, enlarged, or denied, each member, regardless of class, is entitled to one vote on each matter submitted to a vote of members.

(2) A member entitled to vote may vote in person or, unless the articles of incorporation or the bylaws otherwise provide, may vote by proxy executed in writing by the member or by his duly authorized attorney-in-fact. No proxy is valid after 11 months from the date of its execution unless otherwise provided in the proxy. Whenever directors or officers are to be elected by members, the bylaws may provide that such elections may be conducted by mail.

(3) The articles of incorporation or the bylaws may provide that in all elections for directors, every member entitled to vote has the right to cumulate his vote and to give one candidate a number of votes equal to his vote multiplied by the number of directors to be elected or to distribute such votes on the same principle among any number of such candidates.

History: **En. Sec. 15, Ch. 198, L. 1967; R.C.M. 1947, 15-2315(part); amd. Sec. 6, Ch. 202, L. 1979.**

35-2-508. When no members to vote. If a corporation has no members or its members have no right to vote, the directors shall have the sole voting power.

History: **En. Sec. 15, Ch. 198, L. 1967; R.C.M. 1947, 15-2315(part).**

35-2-509. Records to be kept — member inspection rights. (1) Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, board of directors, and committees having any of the authority of the board of directors. Each corporation shall keep at its registered office or principal office in this state a record of the names and addresses of its members entitled to vote.

(2) All books and records of a corporation may be inspected by any member or his agent or attorney for any proper purpose at any reasonable time.

History: **En. Sec. 25, Ch. 198, L. 1967; R.C.M. 1947, 15-2325.**

Part 6

Merger, Consolidation, and Sale of Assets

35-2-601. Procedure for merger — contents of plan. (1) Any two or more domestic corporations may merge into one of such corporations pursuant to a plan of merger approved in the manner provided in this chapter.

(2) Each corporation shall adopt a plan of merger setting forth:

(a) the names of the corporations proposing to merge and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation;

(b) the terms and conditions of the proposed merger;

(c) a statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger;

(d) such other provisions with respect to the proposed merger as are deemed necessary or desirable.

History: **En. Sec. 38, Ch. 198, L. 1967; R.C.M. 1947, 15-2338.**

35-2-602. Procedure for consolidation — contents of plan. (1) Any two or more domestic corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in this chapter.

(2) Each corporation shall adopt a plan of consolidation setting forth:

(a) the names of the corporations proposing to consolidate and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation;

(b) the terms and conditions of the proposed consolidation;

(c) with respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this chapter;

(d) such other provisions with respect to the proposed consolidation as are deemed necessary or desirable.

History: **En. Sec. 39, Ch. 198, L. 1967; R.C.M. 1947, 15-2339.**

35-2-603. Approval of merger or consolidation. (1) A plan of merger or consolidation shall be adopted in the following manner:

(a) If the members of any merging or consolidating corporation are entitled to vote thereon, the board of directors of such corporation shall adopt a resolution approving the proposed plan and directing that it be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice setting forth the proposed plan or a summary thereof shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members. The proposed plan shall be adopted upon receiving at least two-thirds of the votes which members present at each such meeting or represented by proxy are entitled to cast.

(b) If any merging or consolidating corporation has no members or no members entitled to vote thereon, a plan of merger or consolidation shall be adopted at a meeting of the board of directors of such corporation upon receiving the vote of a majority of the directors in office.

(2) After such approval and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation.

History: **En. Sec. 40, Ch. 198, L. 1967; R.C.M. 1947, 15-2340.**

Cross-References

Notice of members' meetings, 35-2-503.

35-2-604. Articles of merger or consolidation — filing — issuance of certificate of merger or consolidation. (1) Upon such approval, articles of merger or articles of consolidation shall be executed by each corporation by its president or a vice-president and by its secretary or an assistant secretary and shall set forth:

(a) the plan of merger or the plan of consolidation;

(b) if the members of any merging or consolidating corporation are entitled to vote thereon, then as to each such corporation:

(i) a statement setting forth the date of the meeting of members at which the plan was adopted, that a quorum was present at such meeting, and that such plan received at least two-thirds of the votes which members present at such meeting or represented by proxy were entitled to cast; or

(ii) a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto; and

(c) if any merging or consolidating corporation has no members or no members entitled to vote thereon, then as to each such corporation a statement of such fact, the date of the meeting of the board of directors at which the plan was adopted, and a statement of the fact that such plan received the vote of a majority of the directors in office.

(2) One original and one copy of the articles of merger or articles of consolidation shall be delivered to the secretary of state. If the secretary of state finds that such articles conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(b) file the original in his office; and

(c) issue a certificate of merger or a certificate of consolidation to which he shall affix the copy.

(3) The certificate of merger or certificate of consolidation, together with the copy of the articles of merger or articles of consolidation affixed thereto by the secretary of state, shall be returned to the surviving or new corporation, as the case may be, or its representative.

History: En. Sec. 41, Ch. 298, L. 1967; R.C.M. 1947, 15-2341; amd. Sec. 42, Ch. 131, L. 1983.

Cross-References

Foreign corporation party to merger, 35-2-815.

Fees, 35-2-1001.

35-2-605. Effect of merger or consolidation. Upon the issuance of the certificate of merger or the certificate of consolidation by the secretary of state, the merger or consolidation shall be effected. When such merger or consolidation has been effected:

(1) The several corporations, parties to the plan of merger or consolidation, shall be a single corporation which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation.

(2) The separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease.

(3) Such surviving or new corporation shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a corporation organized under this chapter.

(4) Such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, of a public as well as of a private nature, of each of the merging or consolidating corporations and all property, real, personal, and mixed, and all debts due on whatever account and all other choses in action and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed; and the title to any real estate or any interest therein vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation.

(5) Such surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated, and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted as if such merger or consolidation had not taken place or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by such merger or consolidation.

(6) In the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the plan of merger. In the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under this chapter shall be deemed to be the articles of incorporation of the new corporation.

History: **En. Sec. 42, Ch. 198, L. 1967; R.C.M. 1947, 15-2342.**

35-2-606. Merger or consolidation of domestic and foreign corporations. (1) One or more foreign corporations and one or more domestic corporations may be merged or consolidated in the following manner, if such merger or consolidation is permitted by the laws of the state under which each such foreign corporation is organized:

(a) Each domestic corporation shall comply with the provisions of this chapter with respect to the merger or consolidation, as the case may be, of domestic corporations, and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized.

(b) If the surviving or new corporation, as the case may be, is to be governed by the laws of any state other than this state, it shall comply with the provisions of this chapter with respect to foreign corporations if it is to conduct affairs in this state, and in every case it shall file with the secretary of state of this state:

(i) an agreement that it may be served with process in this state in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation; and

(ii) an irrevocable appointment of the secretary of state of this state as its agent to accept service of process in any such proceeding.

(2) The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, if the surviving or new corporation is to be governed by the laws of this state. If the surviving or new corporation is to be governed by the laws of any state other than this

state, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except insofar as the laws of the other state provide otherwise.

(3) After approval by the members or, if there be no members entitled to vote thereon, by the board of directors and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation.

History: **En. Sec. 43, Ch. 198, L. 1967; R.C.M. 1947, 15-2343.**

Cross-References

Filing required, 35-2-815.

Withdrawal of foreign corporation, 35-2-816.

Fees, 35-2-1001.

35-2-607. Sale or other disposition of assets. A sale, lease, exchange, mortgage, pledge, or other disposition of all or substantially all the property and assets of a corporation may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any corporation for profit, domestic or foreign, as may be authorized in the following manner:

(1) If there are members entitled to vote thereon, the board of directors shall adopt a resolution recommending such sale, lease, exchange, mortgage, pledge, or other disposition and directing that it be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice stating that the purpose or one of the purposes of such meeting is to consider the sale, lease, exchange, mortgage, pledge, or other disposition of all or substantially all the property and assets of the corporation shall be given to each member entitled to vote at such meeting within the time and in the manner provided by this chapter for the giving of notice of meetings of members. At such meeting the members may authorize such sale, lease, exchange, mortgage, pledge, or other disposition and may fix or may authorize the board of directors to fix any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast. After such authorization by a vote of members, the board of directors, nevertheless, in its discretion, may abandon such sale, lease, exchange, mortgage, pledge, or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by members.

(2) If there are no members or no members entitled to vote thereon, a sale, lease, exchange, mortgage, pledge, or other disposition of all or substantially all the property and assets of a corporation shall be authorized upon receiving the vote of a majority of the directors in office.

History: **En. Sec. 44, Ch. 198, L. 1967; R.C.M. 1947, 15-2344.**

Cross-References

Notice of members' meetings, 35-2-503.

Part 7

Dissolution and Liquidation

Part Cross-References

Dissolution and liquidation of business corporations, Title 35, ch. 1, part 9.

Involuntary corporate dissolution, Title 35, ch. 6.

Dissolution and winding up of partnerships in general, Title 35, ch. 10, part 6.

Dissolution of limited partnerships, Title 35, ch. 12, part 12.

Sale or disposition of assets of cooperative associations, 35-15-506.

Sale or disposition of assets of cooperative agricultural marketing associations, 35-17-506.

Dissolution of rural cooperative utilities, 35-18-404, 35-18-405.

35-2-701. Voluntary dissolution — resolution. A corporation may dissolve and wind up its affairs in the following manner:

(1) If there are members entitled to vote thereon, the board of directors shall adopt a resolution recommending that the corporation be dissolved and directing that the question of such dissolution be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice stating that the purpose or one of the purposes of such meeting is to consider the advisability of dissolving the corporation shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members. A resolution to dissolve the corporation shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast.

(2) If there are no members or no members entitled to vote thereon, the dissolution of the corporation shall be authorized at a meeting of the board of directors upon the adoption of a resolution to dissolve by the vote of a majority of the directors in office.

(3) Upon the adoption of such resolution by the members or by the board of directors if there are no members or no members entitled to vote thereon, the corporation shall cease to conduct its affairs except insofar as may be necessary for the conclusion thereof, shall immediately cause a notice of the proposed dissolution to be mailed to each known creditor of the corporation, and shall proceed to collect its assets and apply and distribute them as provided in this chapter.

History: En. Sec. 45, Ch. 198, L. 1967; R.C.M. 1947, 15-2345.

Cross-References

Notice of members' meetings, 35-2-503.

35-2-702. Distribution of assets. The assets of a corporation in the process of dissolution shall be applied and distributed as follows:

(1) All liabilities and obligations of the corporation shall be paid and discharged or adequate provision shall be made therefor.

(2) Assets held by the corporation upon condition requiring return, transfer, or conveyance which condition occurs by reason of the dissolution shall be returned, transferred, or conveyed in accordance with such requirements.

(3) Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes, but not held upon a condition requiring return, transfer, or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more domestic or foreign corporations, societies, or organizations engaged in activities substantially similar to those of the dissolving corporation pursuant to a plan of distribution adopted as provided in this chapter.

(4) Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive rights of members or any class or classes of members or provide for distribution to others.

(5) Any remaining assets may be distributed to such persons, societies, organizations, or domestic or foreign corporations, whether for profit or nonprofit, as may be specified in a plan of distribution adopted as provided in this chapter.

History: **En. Sec. 46, Ch. 198, L. 1967; R.C.M. 1947, 15-2346.**

35-2-703. Plan of distribution. A plan providing for the distribution of assets, not inconsistent with the provisions of this chapter, may be adopted by a corporation in the process of dissolution and shall be adopted by a corporation for the purpose of authorizing any transfer or conveyance of assets for which this chapter requires a plan of distribution, in the following manner:

(1) If there are members entitled to vote thereon, the board of directors shall adopt a resolution recommending a plan of distribution and directing the submission thereof to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice setting forth the proposed plan of distribution or a summary thereof shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members. Such plan of distribution shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast.

(2) If there are no members or no members entitled to vote thereon, a plan of distribution shall be adopted at a meeting of the board of directors upon receiving a vote of a majority of the directors in office.

History: **En. Sec. 47, Ch. 198, L. 1967; R.C.M. 1947, 15-2347.**

Cross-References

Notice of members' meetings, 35-2-503.

35-2-704. Revocation of voluntary dissolution proceedings. (1) A corporation may, at any time prior to the issuance of a certificate of dissolution by the secretary of state, revoke the action theretofore taken to dissolve the corporation in the following manner:

(a) If there are members entitled to vote thereon, the board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked and directing that the question of such revocation be submitted to a vote at a meeting of members entitled to vote thereon, which may be either an annual or a special meeting. Written notice stating that the purpose or one of the purposes of such meeting is to consider the advisability of revoking the voluntary dissolution proceedings shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of members. A resolution to revoke the voluntary dissolution proceedings shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast.

(b) If there are no members or no members entitled to vote thereon, a resolution to revoke the voluntary dissolution proceedings shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

(2) Upon the adoption of such resolution by the members or by the board of directors where there are no members or no members entitled to vote thereon, the corporation may thereupon again conduct its affairs.

History: **En. Sec. 48, Ch. 198, L. 1967; R.C.M. 1947, 15-2348.**

Cross-References

Notice of members' meetings, 35-2-503.

35-2-705. Articles of dissolution. If voluntary dissolution proceedings have not been revoked, then when all debts, liabilities, and obligations of the corporation shall have been paid and discharged or adequate provision shall have been made therefor and all of the remaining property and assets of the corporation shall have been transferred, conveyed, or distributed in accordance with the provisions of this chapter, articles of dissolution shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary, which statement shall set forth:

(1) the name of the corporation;

(2) if there are members entitled to vote thereon:

(a) a statement setting forth the date of the meeting of members at which the resolution to dissolve was adopted, that a quorum was present at such meeting, and that such resolution received at least two-thirds of the votes which members present at such meeting or represented by proxy were entitled to cast; or

(b) a statement that such resolution was adopted by a consent in writing signed by all members entitled to vote with respect thereto;

(3) if there are no members or no members entitled to vote thereon, a statement of such fact, the date of the meeting of the board of directors at which the resolution to dissolve was adopted, and a statement of the fact that such resolution received the vote of a majority of the directors in office;

(4) that all debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor;

(5) a copy of the plan of distribution, if any, as adopted by the corporation or a statement that no plan was so adopted;

(6) that all the remaining property and assets of the corporation have been transferred, conveyed, or distributed in accordance with the provisions of this chapter; and

(7) that there are no suits pending against the corporation in any court or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit.

History: **En. Sec. 49, Ch. 198, L. 1967; R.C.M. 1947, 15-2349; amd. Sec. 43, Ch. 131, L. 1983.**

Cross-References

Filing fees, 35-2-1001.

Appeal from failure of approval, 35-2-1103.

35-2-706. Filing of articles of dissolution — issuance of certificate of dissolution — effect. (1) One original and one copy of the articles of dissolution shall be delivered to the secretary of state. If the secretary of state finds that such articles of dissolution conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(b) file the original in his office; and

(c) issue a certificate of dissolution to which he shall affix the copy.

(2) The certificate of dissolution, together with the copy of the articles of dissolution affixed thereto by the secretary of state, shall be returned to the representative of the dissolved corporation. Upon the issuance of such certificate of dissolution the existence of the corporation shall cease, except for the purpose of suits, other proceedings, and appropriate corporate action by members, directors, and officers as provided in this chapter.

History: **En. Sec. 50, Ch. 198, L. 1967; R.C.M. 1947, 15-2350; amd. Sec. 44, Ch. 131, L. 1983.**

Cross-References

Cancellation of registration of assumed business name upon dissolution of domestic corporation, 30-13-214.

Fees, 35-2-1001.

Appeal from failure of approval, 35-2-1103.

35-2-707 through 35-2-710 reserved.

35-2-711. Power of court to liquidate assets and affairs of corporation — venue. (1) The assets and affairs of a corporation may be liquidated:

(a) in an action by a member or director when it is made to appear:

(i) that the directors are deadlocked in the management of the corporate affairs and that irreparable injury to the corporation is being suffered or is threatened by reason thereof and either that the members are unable to break the deadlock or there are no members having voting rights;

(ii) that the acts of the directors or those in control of the corporation are illegal, oppressive, or fraudulent;

(iii) that the members entitled to vote in the election of directors are deadlocked in voting power and have failed for at least 2 years to elect successors to directors whose terms have expired or would have expired upon the election of their successors;

(iv) that the corporate assets are being misapplied or wasted; or

(v) that the corporation is unable to carry out its purposes;

(b) in an action by a creditor:

(i) when the claim of the creditor has been reduced to judgment and an execution thereon has been returned unsatisfied and it is established that the corporation is insolvent; or

(ii) when the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent;

(c) upon application by a corporation to have its dissolution continued under the supervision of the court;

(d) when a corporation has been dissolved by the secretary of state and it is established that liquidation of its affairs is necessary;

(e) upon filing a verified petition and/or application by a member, director, or creditor of any corporation which was dissolved under any corporation laws which were in effect prior to December 31, 1968, if such dissolved corporation has or may after December 31, 1968, be found to have any property, property rights, or other assets, including money, which have not been distributed to creditors and/or members legally entitled to the same.

(2) Proceedings under this section shall be brought in the district court in which the registered office or the principal office of the corporation is situated.

(3) It shall not be necessary to make directors or members parties to any such action or proceedings unless relief is sought against them personally.

History: **En. Sec. 54, Ch. 198, L. 1967; amd. Sec. 1, Ch. 62, L. 1969; amd. Sec. 8, Ch. 455, L. 1977; R.C.M. 1947, 15-2354; amd. Sec. 153, Ch. 575, L. 1981.**

Cross-References

Involuntary dissolution — procedure, 35-6-104.

Reinstatement of dissolved corporation, 35-6-201.

35-2-712. Liquidation by court — procedure — receiver — distribution of assets. (1) In proceedings to liquidate the assets and affairs of a corporation, the court shall have the power to issue injunctions, to appoint a receiver or receivers pendente lite with such powers and duties as the court from time to time may direct, and to take such other proceedings as may be requisite to preserve the corporate assets wherever situated and carry on the affairs of the corporation until a full hearing can be had.

(2) After a hearing had upon such notice as the court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation. Such liquidating receiver or receivers shall have authority, subject to the order of the court, to sell, convey, and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings.

(3) The assets of the corporation or the proceeds resulting from a sale, conveyance, or other disposition thereof shall be applied and distributed as follows:

(a) All costs and expenses of the court proceedings and all liabilities and obligations of the corporation shall be paid, satisfied, and discharged or adequate provision shall be made therefor.

(b) Assets held by the corporation upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution or liquidation, shall be returned, transferred, or conveyed in accordance with such requirements.

(c) Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational, or similar purposes but not held upon a condition requiring return, transfer, or conveyance by reason of the dissolution or liquidation shall be transferred or conveyed to one or more domestic or foreign corporations, societies, or organizations engaged in activities substantially similar to those of the dissolving or liquidating corporation as the court may direct.

(d) Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive right of members or any class or classes of members or provide for distribution to others.

(e) Any remaining assets may be distributed to such persons, societies, organizations, or domestic or foreign corporations, whether for profit or not for profit, specified in the plan of distribution adopted as provided in this chapter or where no plan of distribution has been adopted, as the court may direct.

(4) The court shall have power to allow from time to time, as expenses of the liquidation, compensation to the receiver or receivers and to attorneys in the proceeding and to direct the payment thereof out of the assets of the corporation or the proceeds of any sale or disposition of such assets.

(5) A receiver of a corporation appointed under the provisions of this section shall have authority to sue and defend in all courts in his own name as receiver of such corporation. The court appointing such receiver shall have exclusive jurisdiction of the corporation and its property, wherever situated.

History: **En. Sec. 55, Ch. 198, L. 1967; R.C.M. 1947, 15-2355.**

Cross-References

Receivers, Title 27, ch. 20.

35-2-713. Qualification and bond of receivers. A receiver shall in all cases be a citizen of the United States or a corporation for profit authorized to act as receiver, which corporation may be a domestic corporation or a foreign corporation authorized to transact business in this state, and shall in all cases give such bond as the court may direct with such sureties as the court may require.

History: **En. Sec. 56, Ch. 198, L. 1967; R.C.M. 1947, 15-2356.**

Cross-References

Receivers, Title 27, ch. 20.

Suretyship, Title 28, ch. 11, part 4.

35-2-714. Filing of claims in liquidation proceedings. In proceedings to liquidate the assets and affairs of a corporation, the court may require all creditors of the corporation to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs under oath of their respective claims. If the court requires the filing of claims, it shall fix a date, which shall be not less than 4 months from the date of the order, as the last day for the filing of claims and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the court may extend the time for the filing of claims. Creditors and claimants failing to file proofs of claim on or before the date so fixed may be barred by order of court from participating in the distribution of the assets of the corporation.

History: **En. Sec. 57, Ch. 198, L. 1967; R.C.M. 1947, 15-2357.**

35-2-715. Discontinuance of liquidation proceedings. The liquidation of the assets and affairs of a corporation may be discontinued at any time during the liquidation proceedings when it is established that cause for liquidation no longer exists. In such event the court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets.

History: **En. Sec. 58, Ch. 198, L. 1967; R.C.M. 1947, 15-2358.**

35-2-716. Decree of involuntary dissolution in proceedings to liquidate. In proceedings to liquidate the assets and affairs of a corporation, when the costs and expenses of such proceedings and all debts, obligations, and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed in accordance with the provisions of this chapter or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts, and obligations and all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease. In the event the proceedings are under 35-2-711(1)(e), the court shall make an order and decree of final distribution and liquidation discharging the receiver appointed and also discharging all surviving directors of such dissolved corporation from their duties and responsibilities as trustees for the creditors and/or members of such corporation.

History: **En. Sec. 59, Ch. 198, L. 1967; amd. Sec. 2, Ch. 62, L. 1969; R.C.M. 1947, 15-2359.**

35-2-717. Filing of decree of dissolution. In case the court shall enter a decree dissolving a corporation, it shall be the duty of the clerk of such court to cause a certified copy of the decree to be filed with the secretary of state. No fee shall be charged by the secretary of state for the filing thereof.

History: **En. Sec. 60, Ch. 198, L. 1967; R.C.M. 1947, 15-2360.**

35-2-718. Deposit of amount due certain persons upon voluntary or involuntary dissolution. Upon the voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to any person who is unknown or cannot be found or who is under disability and there is no person legally competent to receive such distributive portion shall be reduced to cash and deposited with the state treasurer and shall be paid over to such person or to his legal representative upon proof satisfactory to the state treasurer of his right thereto or shall be disposed of by the state treasurer in the manner provided by law.

History: **En. Sec. 61, Ch. 198, L. 1967; R.C.M. 1947, 15-2361.**

35-2-719. Survival of remedy after dissolution. The dissolution of a corporation either by the issuance of a certificate of dissolution by the secretary of state or by a decree of court when the court has not liquidated the assets and affairs of the corporation as provided in this chapter or by expiration of its period of duration shall not take away or impair any remedy available to or against such corporation, its directors, officers, or members for any right or claim existing or any liability incurred prior to such dissolution if action or other proceeding thereon is commenced within 5 years after the date of such dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The members, directors, and officers shall have power to take such corporate or other action as shall be appropriate to protect such remedy, right, or claim. If such corporation was dissolved by the expiration of its period of duration, such corporation may amend its articles of incorporation at any time during such period of 5 years so as to extend its period of duration.

History: En. Sec. 62, Ch. 198, L. 1967; R.C.M. 1947, 15-2362.

Part 8

Foreign Corporations

35-2-801. Admission of foreign corporation. (1) No foreign corporation shall have the right to conduct affairs in this state until it shall have procured a certificate of authority so to do from the secretary of state.

(2) No foreign corporation shall be entitled to procure a certificate of authority under this chapter to conduct in this state any affairs which a corporation organized under this chapter is prohibited from conducting.

(3) A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state or country under which such corporation is organized governing its organization and internal affairs differ from the laws of this state, and nothing in this chapter contained shall be construed to authorize this state to regulate the organization or the internal affairs of such corporation.

History: En. Sec. 63, Ch. 198, L. 1967; R.C.M. 1947, 15-2363(part).

Cross-References

Fees, 35-2-1001.

35-2-802. Activities not to be considered conducting affairs. Without excluding other activities which may not constitute conducting affairs in this state, a foreign corporation shall not be considered to be conducting affairs in this state, for the purposes of this chapter, by reason of carrying on in this state any one or more of the following activities:

(1) maintaining or defending any action or suit or any administrative or arbitration proceeding or effecting the settlement thereof or the settlement of claims or disputes;

(2) holding meetings of its directors or members or carrying on other activities concerning its internal affairs;

(3) maintaining bank accounts;

(4) creating evidences of debt, mortgages, or liens on real or personal property;

(5) securing or collecting debts due to it or enforcing any rights in property securing the same;

(6) conducting its affairs in interstate commerce;

(7) granting funds;

(8) distributing information to its members;

(9) conducting an isolated transaction completed within a period of 30 days and not in the course of a number of repeated transactions of like nature.

History: En. Sec. 63, Ch. 198, L. 1967; R.C.M. 1947, 15-2363(part).

35-2-803. Conducting affairs without certificate of authority — disabilities and liabilities. (1) No foreign corporation which is conducting affairs in this state without a certificate of authority shall be permitted to maintain any action, suit, or proceeding in any court of this state until such corporation shall have obtained a certificate of authority. Nor shall any action, suit, or proceeding be maintained in any court of this state by any successor or assignee of such corporation on any right, claim, or demand arising out of the conduct of affairs by such corporation in this state until a certificate of authority shall have been obtained by such corporation or by a corporation which has acquired all or substantially all of its assets.

(2) The failure of a foreign corporation to obtain a certificate of authority to conduct affairs in this state shall not impair the validity of any contract or act of such corporation and shall not prevent such corporation from defending any action, suit, or proceeding in any court of this state.

(3) A foreign corporation which conducts affairs in this state without a certificate of authority shall be liable to this state, for the years or parts thereof during which it conducted affairs in this state without a certificate of authority, in an amount equal to all fees which would have been imposed by this chapter upon such corporation had it duly applied for and received a certificate of authority to conduct affairs in this state as required by this chapter and thereafter filed all reports required by this chapter, plus all interest and penalties imposed by this chapter for failure to pay such fees. The attorney general shall bring proceedings to recover all amounts due this state under the provisions of this section.

History: En. Sec. 80, Ch. 198, L. 1967; R.C.M. 1947, 15-2380.

Cross-References

Fee for certificate, 35-2-1001.

35-2-804. Rights and duties of foreign corporation. A foreign corporation which shall have received a certificate of authority under this chapter shall, until a certificate of revocation or of withdrawal shall have been issued as provided in this chapter, enjoy the same but no greater rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which such certificate of authorization is issued and, except as in this chapter otherwise provided, shall be subject to the same duties, restrictions, penalties, and liabilities imposed on or after December 31, 1968, upon a domestic corporation of like character.

History: En. Sec. 64, Ch. 198, L. 1967; R.C.M. 1947, 15-2364.

35-2-805. Corporate name. No certificate of authority may be issued to a foreign corporation unless the corporate name of such corporation:

(1) contains, or there is added at the end of the name, the word "corporation", "company", "incorporated", or "limited" or an abbreviation of one of such words;

(2) does not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation;

(3) is not the same as or deceptively similar to any assumed business name, limited partnership name, trademark, or service mark registered or reserved with the secretary of state or to the name of any corporation, whether for profit or not for profit, existing under the laws of this state or any foreign corporation, whether for profit or not for profit, authorized to

transact business or conduct affairs in this state or a corporate name reserved or registered as permitted by the laws of this state;

(4) is transliterated into letters of the English alphabet, if it is not in English.

History: En. Sec. 65, Ch. 198, L. 1967; R.C.M. 1947, 15-2365; amd. Sec. 7, Ch. 456, L. 1983.

Cross-References

Assumed business names, Title 30, ch. 13, part 2.

Exclusivity of corporate name, 30-13-202.

Trade and service marks, Title 30, ch. 13, part 3.

Business corporation, corporate name, Title 35, ch. 1, part 3.

Foreign corporation, corporate name, 35-1-1006.

Nonprofit corporation, corporate name, 35-2-301.

Fees, 35-2-1001.

Business trust name, 35-5-201.

Acquisition of new name by dissolved corporation upon reinstatement, 35-6-203.

Restrictions on limited partnership names, 35-12-505.

Rural cooperative utility names, 35-18-201.

35-2-806. Change of name. Whenever a foreign corporation which is authorized to conduct affairs in this state shall change its name to one under which a certificate of authority would not be granted to it on application therefor, the certificate of authority of such corporation shall be suspended and it shall not thereafter conduct any affairs in this state until it has changed its name to a name which is available to it under the laws of this state.

History: En. Sec. 66, Ch. 198, L. 1967; R.C.M. 1947, 15-2366.

Cross-References

Assumed business names, Title 30, ch. 13, part 2.

Exclusivity of corporate name, 30-13-202.

Business corporation, corporate name, Title 35, ch. 1, part 3.

Foreign corporation, corporate name, 35-1-1006.

Nonprofit corporation, corporate name, 35-2-301.

Business trust name, 35-5-201.

Acquisition of new name by dissolved corporation upon reinstatement, 35-6-203.

Restrictions on limited partnership names, 35-12-505.

Rural cooperative utility names, 35-18-201.

35-2-807. Application for certificate of authority. (1) A foreign corporation, in order to procure a certificate of authority to conduct affairs in this state, shall make application therefor to the secretary of state, which application shall set forth:

(a) the name of the corporation and the state or country under the laws of which it is incorporated;

(b) the date of incorporation and the period of duration of the corporation;

(c) the address of the principal office of the corporation in the state or country under the laws of which it is incorporated;

(d) the address of the proposed registered office of the corporation in this state and the name of its proposed registered agent in this state at such address;

(e) the purpose or purposes of the corporation which it proposes to pursue in conducting its affairs in this state;

(f) the names and respective addresses of the directors and officers of the corporation; and

(g) such additional information as may be necessary or appropriate in order to enable the secretary of state to determine whether such corporation is entitled to a certificate of authority to conduct affairs in this state.

(2) Such application shall be made on forms prescribed and furnished by the secretary of state and shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary.

History: En. Sec. 67, Ch. 198, L. 1967; R.C.M. 1947, 15-2367; amd. Sec. 45, Ch. 131, L. 1983.

Cross-References

Fees, 35-2-1001.

35-2-808. Filing of application — issuance of certificate of authority. (1) One original and one copy of the application of the corporation for a certificate of authority shall be delivered to the secretary of state, together with a copy of its articles of incorporation and all amendments thereto, duly certified by the proper officer of the state or country under the laws of which it is incorporated.

(2) If the secretary of state finds that such application conforms to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(b) file in his office the original of the application and the copy of the articles of incorporation and amendments thereto; and

(c) issue a certificate of authority to conduct affairs in this state to which he shall affix the copy of the application.

(3) The certificate of authority, together with the copy of the application affixed thereto by the secretary of state, shall be returned to the corporation or its representative.

History: En. Sec. 68, Ch. 198, L. 1967; R.C.M. 1947, 15-2368; amd. Sec. 46, Ch. 131, L. 1983.

35-2-809. Effect of certificate of authority. Upon the issuance of a certificate of authority by the secretary of state, the corporation shall be authorized to conduct affairs in this state for those purposes set forth in its application, subject, however, to the right of this state to suspend or to revoke such authority as provided in this chapter.

History: En. Sec. 69, Ch. 198, L. 1967; R.C.M. 1947, 15-2369.

35-2-810. Amended certificate of authority. (1) A foreign corporation authorized to conduct affairs in this state shall procure an amended certificate of authority in the event it changes its corporate name or desires to pursue in this state other or additional purposes than those set forth in its prior application for a certificate of authority, by making application therefor to the secretary of state.

(2) The requirements in respect to the form and contents of such application, the manner of its execution, the filing of one original and one copy with the secretary of state, the issuance of an amended certificate of authority, and the effect thereof shall be the same as in the case of an original application for a certificate of authority.

History: En. Sec. 75, Ch. 198, L. 1967; R.C.M. 1947, 15-2375; amd. Sec. 47, Ch. 131, L. 1983.

35-2-811. Registered office and registered agent of foreign corporation. Each foreign corporation authorized to conduct affairs in this state shall have and continuously maintain in this state:

(1) a registered office which may be but need not be the same as its principal office;

(2) a registered agent, which agent may be either an individual resident in this state whose business office is identical with such registered office, or a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this state having an office identical with such registered office.

History: En. Sec. 70, Ch. 198, L. 1967; R.C.M. 1947, 15-2370.

Cross-References

Agency, Title 28, ch. 10.

35-2-812. Change of registered office or registered agent of foreign corporation. (1) A foreign corporation authorized to conduct affairs in this state may change its registered office or change its registered agent, or both, upon filing in the office of the secretary of state a statement setting forth:

(a) the name of the corporation;

(b) the address of its then registered office;

(c) if the address of its registered office be changed, the address to which the registered office is to be changed;

(d) the name of its registered agent;

(e) if its registered agent be changed, the name of its successor registered agent;

(f) that the address of its registered office and the address of the office of its registered agent, as changed, will be identical; and

(g) that such change was authorized by resolution duly adopted by its board of directors.

(2) Such statement shall be executed for the corporation by any officer thereof and delivered to the secretary of state. If the secretary of state finds that such statement conforms to the provisions of this chapter, he shall file such statement in his office, and upon such filing, the change of address of the registered office or the appointment of a new registered agent, or both, as the case may be, shall become effective.

(3) A registered agent of a foreign corporation may resign as registered agent upon executing a written notice of resignation and filing one original and one copy with the secretary of state, who shall immediately mail a copy thereof to the foreign corporation at its registered office. The appointment of the agent shall terminate 30 days after receipt of such notice by the secretary of state.

(4) If a registered agent changes his or its business address to another place within the same state, he or it may change such address and the address of the registered office of any corporations of which he or it is registered agent by filing a statement as required above except that it need be signed only by the registered agent and need not be responsive to (1)(e) or (1)(g) and must recite that a copy of the statement has been mailed to each such corporation.

History: En. Sec. 71, Ch. 198, L. 1967; R.C.M. 1947, 15-2371; amd. Sec. 48, Ch. 131, L. 1983.

35-2-813. Service of process on foreign corporation. Service of process on foreign corporation shall be effected upon the persons and in the manner provided by the Montana Rules of Civil Procedure.

History: En. Sec. 72, Ch. 198, L. 1967; R.C.M. 1947, 15-2372.

Cross-References

Service of process, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

35-2-814. Filing required of amended articles of incorporation. Whenever the articles of incorporation of a foreign corporation authorized to conduct affairs in this state are amended, such foreign corporation shall, within 60 days after such amendment becomes effective, file in the office of the secretary of state a copy of such amendment duly certified by the proper officer of the state or country under the laws of which it is incorporated, but the filing thereof shall not of itself enlarge or alter the purpose or purposes which such corporation is authorized to pursue in conducting its affairs in this state or authorize such corporation to conduct affairs in this state under any other name than the name set forth in its certificate of authority.

History: En. Sec. 73, Ch. 198, L. 1967; R.C.M. 1947, 15-2373.

35-2-815. Filing required when foreign corporation is party to a merger. Whenever a foreign corporation authorized to conduct affairs in this state shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is incorporated and such corporation shall be the surviving corporation, it shall, within 60 days after such merger becomes effective, file with the secretary of state a copy of the articles of merger duly certified by the proper officer of the state or country under the laws of which such statutory merger was effected. It shall not be necessary for such corporation to procure either a new or amended certificate of authority to conduct affairs in this state unless the name of such corporation be changed thereby or unless the corporation desires to pursue in this state other or additional purposes than those which it is then authorized to pursue in this state.

History: En. Sec. 74, Ch. 198, L. 1967; R.C.M. 1947, 15-2374.

35-2-816. Withdrawal. (1) A foreign corporation authorized to conduct affairs in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure such certificate of withdrawal, such foreign corporation shall deliver to the secretary of state an application for withdrawal which shall set forth:

(a) the name of the corporation and the state or country under the laws of which it is incorporated;

(b) that the corporation is not conducting affairs in this state;

(c) that the corporation surrenders its authority to conduct affairs in this state;

(d) that the corporation revokes the authority of its registered agent in this state to accept service of process and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in this state during the time the corporation was authorized to conduct affairs in this state may thereafter be made on such corporation by service thereof on the secretary of state;

(e) a post-office address to which the secretary of state may mail a copy of any process against the corporation that may be served on him.

(2) The application for withdrawal shall be made on forms prescribed by the secretary of state and shall be executed by the corporation by its president or a vice-president and by its secretary or an assistant secretary or, if

the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by such receiver or trustee.

History: **En. Sec. 76, Ch. 198, L. 1967; R.C.M. 1947, 15-2376.**

35-2-817. Filing of application for withdrawal — issuance of certificate of withdrawal — effect. (1) One original and one copy of the application for withdrawal shall be delivered to the secretary of state. If the secretary of state finds that such application conforms to the provisions of this chapter, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on the original and the copy the word "filed" and the month, day, and year of the filing thereof;

(b) file the original in his office; and

(c) issue a certificate of withdrawal to which he shall affix the copy.

(2) The certificate of withdrawal, together with the copy of the application for withdrawal affixed thereto by the secretary of state, shall be returned to the corporation or its representative. Upon the issuance of such certificate of withdrawal, the authority of the corporation to conduct affairs in this state shall cease.

History: **En. Sec. 77, Ch. 198, L. 1967; R.C.M. 1947, 15-2377; amd. Sec. 49, Ch. 131, L. 1983.**

35-2-818. Revocation of certificate of authority — grounds — notice. (1) The certificate of authority of a foreign corporation to conduct affairs in this state may be revoked by the secretary of state upon the conditions prescribed in this section when:

(a) the corporation has failed to file its annual report within the time required by this chapter or has failed to pay any fees or penalties prescribed by this chapter when they have become due and payable;

(b) the corporation has failed to appoint and maintain a registered agent in this state as required by this chapter;

(c) the corporation has failed, after change of its registered agent, to file in the office of the secretary of state a statement of such change as required by this chapter;

(d) the corporation has failed to file in the office of the secretary of state any amendment to its articles of incorporation or any articles of merger within the time prescribed by this chapter;

(e) the certificate of authority of the corporation was procured through fraud practiced upon the state;

(f) the corporation has continued to exceed or abuse the authority conferred upon it by this chapter; or

(g) a misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation pursuant to this chapter.

(2) No certificate of authority of a foreign corporation shall be revoked by the secretary of state unless:

(a) he shall have given the corporation not less than 60 days' notice thereof by mail addressed to its registered office in this state; and

(b) the corporation shall fail prior to revocation to file such annual report or pay such fees or penalties or file the required statement of change of registered agent or file such articles of amendment or articles of merger or correct such misrepresentation.

History: **En. Sec. 78, Ch. 198, L. 1967; R.C.M. 1947, 15-2378.**

35-2-819. Issuance of notice of revocation — effect. (1) Upon revoking any such certificate of authority, the secretary of state shall:

(a) issue a notice of revocation in duplicate;

(b) file one of such notices in his office;

(c) mail to such corporation at its registered office in this state the duplicate notice of revocation.

(2) Upon the issuance of such notice of revocation, the authority of the corporation to conduct affairs in this state shall cease.

History: **En. Sec. 79, Ch. 198, L. 1967; R.C.M. 1947, 15-2379; amd. Sec. 8, Ch. 456, L. 1983.**

Cross-References

Appeal of failure to approve certificate, 35-2-1103.

Part 9

Annual Reports

35-2-901. Annual report of domestic and foreign corporations. (1) Each domestic corporation and each foreign corporation authorized to conduct affairs in Montana shall file, within the time prescribed by this chapter, an annual report setting forth:

(a) the name of the corporation and the state or country under the laws of which it is incorporated;

(b) the address of the registered office of the corporation in Montana and the name of its registered agent in Montana at that address and, in the case of a foreign corporation, the address of its principal office in the state or country under the laws of which it is incorporated;

(c) a brief statement of the character of the affairs which the corporation is actually conducting or, in the case of a foreign corporation, which the corporation is actually conducting in this state;

(d) the names and respective addresses of the directors and officers of the corporation.

(2) The annual report must be made on forms or in a computerized format prescribed by the secretary of state, and the information contained in the report must be given as of the date of the execution of the report. It must be executed by the corporation by its president, a vice-president, secretary, an assistant secretary, or treasurer, or if the corporation is in the hands of a receiver or trustee, it must be executed on behalf of the corporation by the receiver or trustee.

History: **En. Sec. 81, Ch. 198, L. 1967; R.C.M. 1947, 15-2381; amd. Sec. 2, Ch. 153, L. 1989.**

Compiler's Comments

1989 Amendment: In (1), in three places, substituted "Montana" for "this state"; near beginning of (2) inserted "or in a computerized format"; and made minor changes in grammar and style.

35-2-902. Filing of annual report of domestic and foreign corporations. (1) Such annual report of a domestic or foreign corporation shall be delivered to the secretary of state between January 1 and April 15 of each year, except that the first annual report of a domestic or foreign corporation shall be filed between January 1 and April 15 of the year next succeeding the calendar year in which its certificate of incorporation or its certificate of authority, as the case may be, was issued by the secretary of state. Proof to the satisfaction of the secretary of state that prior to April 15 such report was deposited in the United States mail in a sealed envelope, properly addressed with postage prepaid, shall be deemed a compliance with this requirement.

(2) If the secretary of state finds that such report conforms to the requirements of this chapter, he shall file the same. If he finds that it does not so conform, he shall promptly return the same to the corporation for any necessary corrections, in which event the penalties prescribed for failure to file such report within the time provided shall not apply if such report is corrected to conform to the requirements of this chapter and returned to the secretary of state within 30 days from the date on which it was mailed to the corporation by the secretary of state.

History: En. Sec. 82, Ch. 198, L. 1967; R.C.M. 1947, 15-2382; amd. Sec. 3, Ch. 78, L. 1979.

Cross-References

Fees, 35-2-1001.

35-2-903. Penalty for failure to file annual report. Each corporation, domestic or foreign, that has failed to file its annual report within the time required by this chapter and fails or refuses to file its annual report within 30 days after the secretary of state has mailed to the corporation at its registered office a demand that such report be filed shall be guilty of a misdemeanor and upon conviction thereof may be fined in any amount not exceeding $500.

History: En. Sec. 85, Ch. 198, L. 1967; R.C.M. 1947, 15-2385.

Part 10

Fees and Charges

35-2-1001. Fees and charges to be established and collected by secretary of state. (1) The secretary of state shall by administrative rule establish, charge, and collect in accordance with the provisions of this chapter and commensurate with costs:

(a) fees for filing documents and issuing certificates; and

(b) miscellaneous charges.

(2) The secretary of state shall maintain records sufficient to support the fees established under this section.

History: En. Sec. 83, Ch. 198, L. 1967; amd. Sec. 7, Ch. 152, L. 1969; R.C.M. 1947, 15-2383; amd. Sec. 7, Ch. 202, L. 1979; amd. Sec. 7, Ch. 119, L. 1985.

Cross-References

Fees relating to business corporations, 35-1-1201, 35-1-1202.

Fees relating to limited partnerships, 35-12-521.

35-2-1002. Miscellaneous charges. The secretary of state shall charge and collect:

(1) for furnishing a certified copy of any document, instrument, or paper relating to a corporation, 50 cents per page and $2 for the certificate and affixing the seal thereto;

(2) for furnishing any certificate not mentioned in this or the preceding section, $5.

History: **En. Sec. 84, Ch. 198, L. 1967; amd. Sec. 2, Ch. 185, L. 1971; R.C.M. 1947, 15-2384.**

Cross-References

Certification of copy of documents, 35-2-1104.

Part 11

Secretary of State

35-2-1101. Powers of secretary of state. The secretary of state shall have the power and authority reasonably necessary to enable him to administer this chapter efficiently and to perform the duties therein imposed upon him.

History: **En. Sec. 87, Ch. 198, L. 1967; R.C.M. 1947, 15-2387.**

35-2-1102. Forms to be prescribed by secretary of state. All reports required by this chapter to be filed in the office of the secretary of state shall be made in a form which shall be prescribed by the secretary of state.

History: **En. Sec. 90, Ch. 198, L. 1967; R.C.M. 1947, 15-2390.**

35-2-1103. Appeal from secretary of state. (1) If the secretary of state shall fail to approve any articles of incorporation, amendment, merger, consolidation, or dissolution or any other document required by this chapter to be approved by the secretary of state before the same shall be filed in his office, he shall, within 10 days after the delivery thereof to him, give written notice of his disapproval to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefor.

(2) From such disapproval such person or corporation may appeal to the district court of the county in which the registered office of such corporation is or is proposed to be situated or in the district court of Lewis and Clark County by filing with the clerk of such court a petition setting forth a copy of the articles or other document sought to be filed and a copy of the written disapproval thereof by the secretary of state, whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the secretary of state or direct him to take such action as the court may deem proper.

(3) If the secretary of state shall revoke the certificate of authority to transact business in this state of any foreign corporation pursuant to the provisions of this chapter, such foreign corporation may likewise appeal to the district court of the county where the registered office of such corporation in this state is situated or in the district court of Lewis and Clark County, by filing with the clerk of such court a petition setting forth a copy of its certificate of authority to transact business in this state and a copy of the notice of revocation given by the secretary of state, whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the secretary of state or direct him to take such action as the court may deem proper.

(4) Appeals from all final orders and judgments entered by the district court under this section in review of any ruling or decision of the secretary of state may be taken as in other civil actions.

History: **En. Sec. 88, Ch. 198, L. 1967; R.C.M. 1947, 15-2388.**

Cross-References

Contested cases, Title 2, ch. 4, part 6.

Judicial review of contested cases, Title 2, ch. 4, part 7.

35-2-1104. Duty of secretary of state to certify copy of articles or amendments. The secretary of state shall upon request certify a copy of the articles of incorporation or the articles of incorporation as restated or any amendments to either thereof.

History: **En. Sec. 37, Ch. 198, L. 1967; R.C.M. 1947, 15-2337(part).**

35-2-1105. Certificates and certified copies as prima facie evidence. All certificates issued by the secretary of state in accordance with the provisions of this chapter and all copies of documents filed in his office in accordance with the provisions of this chapter, when certified by him, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated. A certificate by the secretary of state under the great seal of this state as to the existence or nonexistence of the facts relating to corporations, which would appear from the presence or absence of documents filed in his office or the compliance or noncompliance with the provisions of this chapter, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated.

History: **En. Sec. 89, Ch. 198, L. 1967; R.C.M. 1947, 15-2389.**

Cross-References

Self-authentication, Rule 902, Montana Rules of Evidence (see Title 26, ch. 10).

Admissibility of duplicates — copies of certain entries, Rule 1003, Montana Rules of Evidence (see Title 26, ch. 10).

Public records, Rule 1005, Montana Rules of Evidence (see Title 26, ch. 10).

35-2-1106. Secretary of state to notify corporation of expiration of existence. The secretary of state shall notify every corporation, not less than 3 months or more than 6 months before the date of the expiration of its corporate existence, that its corporate existence is about to expire, which notice shall be given by registered or certified letter addressed to such corporation at its principal place of business, as it appears from the last annual report.

History: **En. Sec. 1, Ch. 256, L. 1981.**

Part 12

Reinstatement

35-2-1201. Reinstatement of corporation whose term has expired. (1) The secretary of state may:

(a) reinstate any corporation which has expired under the provisions of this chapter; and

(b) restore to such corporation its right to carry on business in this state and to exercise all its corporate privileges and immunities.

(2) A corporation applying for reinstatement shall submit to the secretary of state one original and one copy of the application, executed by a person who was an officer or director at the time of expiration, setting forth:

(a) the name of the corporation;

(b) a statement that the assets of the corporation have not been liquidated;

(c) a statement that not less than a majority of its directors have authorized the application for reinstatement; and

(d) if its corporate name has been legally acquired by another corporation prior to its application for reinstatement, the corporate name under which the corporation desires to be reinstated.

(3) The corporation shall submit with its application for reinstatement:

(a) a certificate from the department of revenue stating that all taxes imposed pursuant to Title 15 have been paid; and

(b) a filing fee in an amount equal to one-half of the filing and license fees which the corporation would be required to pay if the corporation were filing its articles of incorporation.

(4) When all requirements are met and the secretary of state reinstates the corporation to its former rights, he shall:

(a) conform and file in his office reports, statements, and other instruments submitted for reinstatement;

(b) immediately issue and deliver to the corporation so reinstated a certificate of reinstatement authorizing it to transact business; and

(c) upon demand, issue to the corporation one or more certified copies of such certificate of reinstatement.

(5) The secretary of state may not order a reinstatement if 5 years have elapsed since the expiration.

History: En. Sec. 2, Ch. 256, L. 1981; amd. Sec. 50, Ch. 131, L. 1983; amd. Sec. 29, Ch. 174, L. 1983.

Cross-References

State tax clearance certificate, 35-1-928.

35-2-1202. Relation back of corporate rights. Any restoration of corporate rights pursuant to 35-2-1201 relates back to the date the corporation expired, and the corporation shall be considered to have been an existing legal entity from the date of its original incorporation.

History: En. Sec. 3, Ch. 256, L. 1981.

35-2-1203. Acquisition of new name. In all cases where a corporation's term has expired and the corporate name of that corporation has been legally acquired by another corporation prior to the application for reinstatement, such expired corporation shall in its application for reinstatement submit to the secretary of state some other name under which it desires its corporate existence to be reinstated. If that name is sufficiently distinctive and different from those of all existing corporations, the secretary of state shall issue to such reinstated corporation a certificate of reinstatement under the new name.

History: En. Sec. 4, Ch. 256, L. 1981.

Cross-References

Assumed business names, Title 30, ch. 13, part 2.

CHAPTER 3

RELIGIOUS CORPORATIONS SOLE

Part 1 — General

35-3-101. Short title.
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Part 2 — Formation and Operation

35-3-201. When corporation sole may be created.
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35-3-205. Powers of corporation sole.
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35-3-207. Succession.
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35-3-209. Annual report.

Chapter Cross-References

Tax exempt property, Title 15, ch. 6, part 2.

Montana Nonprofit Corporation Act, Title 35, ch. 2.

Part 1

General

35-3-101. Short title. This chapter shall be known and may be cited as the "Montana Religious Corporation Sole Act".

History: En. Sec. 1, Ch. 301, L. 1967; R.C.M. 1947, 15-2401.

35-3-102. Applicability. The provisions of this chapter shall apply to corporations sole existing on December 31, 1968, or formed in accordance herewith and the Montana Nonprofit Corporation Act shall apply thereto only when not inconsistent with the provisions of this chapter. Foreign corporations sole will likewise be governed by the applicable provisions of the Montana Nonprofit Corporation Act when not inconsistent with the provisions of this chapter.

History: En. Sec. 2, Ch. 301, L. 1967; R.C.M. 1947, 15-2402(part).

Cross-References

Montana Nonprofit Corporation Act, Title 35, ch. 2.

Nonprofit foreign corporations, Title 35, ch. 2, part 8.

Management of institutional funds, Title 72, ch. 30.

35-3-103. Repeal of prior act not to affect rights accrued or liabilities incurred. The repeal of a prior act by this chapter shall not affect any right accrued or established or any liability or penalty incurred under the provisions of such act prior to the repeal thereof.

History: En. Sec. 12, Ch. 301, L. 1967; R.C.M. 1947, 15-2412.

Cross-References

Nonmunicipal corporations, Art. XIII, sec. 1, Mont. Const.

Part 2

Formation and Operation

Part Cross-References

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.

Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.

Organization of professional service corporations, Title 35, ch. 4, part 2.

Formation and operation of business trusts, Title 35, ch. 5, part 2.

Formation of limited partnerships, Title 35, ch. 12, part 6.

Formation of mining partnerships, Title 35, ch. 13, part 1.

Formation, articles of incorporation, and bylaws of cooperative associations, Title 35, ch. 15, part 2.

Formation of agricultural associations, Title 35, ch. 16, part 2.

Formation of cooperative agricultural marketing associations, Title 35, ch. 17, part 2.

Formation, articles, and bylaws of rural cooperative utilities, Title 35, ch. 18, part 2.

Formation of cemetery associations, Title 35, ch. 20, part 1.

Organization of mausoleum and columbarium authorities, Title 35, ch. 21, part 2.

35-3-201. When corporation sole may be created. Whenever the rules or discipline of any religious denomination, society, or church permit or require the estate, property, temporalities, and business thereof to be held in the name of or managed by a bishop, chief priest, or presiding elder, it shall be lawful for such bishop, chief priest, or presiding elder of such religious denomination, society, or church to become a corporation sole in the manner herein prescribed.

History: En. Sec. 3, Ch. 301, L. 1967; R.C.M. 1947, 15-2403.

35-3-202. Articles of incorporation. (1) The articles of incorporation shall set forth:

(a) the name of the corporation;

(b) the period of duration, which may be perpetual;

(c) the name of the religious denomination, society, or church creating the corporation sole;

(d) the name of the bishop, chief priest, or presiding elder whose office is incorporated under this chapter, together with a designation of the boundaries of the territory over which he presides or over which his jurisdiction extends and the facts authorizing such incorporation;

(e) the manner in which any vacancy occurring in the incumbency of such bishop, chief priest, or presiding elder, as required by the rules or discipline of such religious denomination, society, or church, shall be filled;

(f) any provisions, not inconsistent with law, which the incorporator elects to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provisions for distribution of assets on dissolution or final liquidation;

(g) the address of its initial registered office and the name of its initial registered agent at such address;

(h) the name and address of the incorporator.

(2) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this chapter.

(3) The articles shall be verified by affidavit of the incorporator, and he shall also file the original or a copy or translation of his commission, certificate, or letters of appointment as such bishop, chief priest, or presiding elder,

duly attested, and his affidavit that the same is a true copy or translation shall be deemed as sufficient attestation thereof.

History: **En. Sec. 4, Ch. 301, L. 1967; R.C.M. 1947, 15-2404.**

Cross-References

Filing fees, 35-2-1001.

35-3-203. Effect of issuance of certificate of incorporation. (1) Upon filing the articles of incorporation in the office of the secretary of state with proof of appointment or election of such bishop, chief priest, or presiding elder, the secretary of state must issue to the corporation over the great seal of the state a certificate of incorporation.

(2) Upon the issuance of this certificate, the corporate existence shall begin and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporator have been complied with and that the corporation has been incorporated under this chapter, except as against the state in a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the corporation.

History: **En. Sec. 5, Ch. 301, L. 1967; R.C.M. 1947, 15-2405.**

35-3-204. Unauthorized assumption of corporate powers — liability. All persons who assume to act as a corporation hereunder without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or arising as the result thereof.

History: **En. Sec. 11, Ch. 301, L. 1967; R.C.M. 1947, 15-2411.**

35-3-205. Powers of corporation sole. Every corporation sole organized under the provisions of this chapter, for the purpose of the trust hereinafter mentioned, shall have power:

(1) to continue to exist perpetually by its corporate name unless a limited period of duration is stated in its articles of incorporation;

(2) to sue and be sued, complain and defend, in its corporate name;

(3) to have a corporate seal which may be altered at pleasure and to use the same by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced;

(4) to purchase, take, receive, lease, take by gift, devise, or bequest or otherwise acquire, own, hold, improve, use, and otherwise deal in and with real or personal property or any interest therein, wherever situated, provided that all such property shall be in trust for the use, purpose, and benefit of such religious denomination, society, or church for which and in whose behalf such corporation sole is organized;

(5) to sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its property and assets;

(6) to lend money to its employees other than its officers and otherwise assist its employees and officers;

(7) to purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of and otherwise use and deal in and with shares or other interests in or obligations of other domestic or foreign corporations, whether for profit or not

for profit, associations, partnerships, or individuals or direct or indirect obligations of the United States or of any other government, state, territory, governmental district, or municipality or of any instrumentality thereof;

(8) to make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and income;

(9) to lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested;

(10) to conduct its affairs, carry on its operations, and have offices and exercise the powers granted by this chapter in any state, territory, district, or possession of the United States or in any foreign country;

(11) to elect or appoint officers and agents of the corporation, including attorneys-in-fact, and to define their duties and fix their compensation;

(12) to make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the corporation;

(13) unless otherwise provided in the articles of incorporation, to make donations for the public welfare or for charitable, religious, scientific, or educational purposes;

(14) to indemnify any officer or agent or any person who may have served at its request as an officer or agent or as a director or officer of another corporation in which it owns shares of capital stock or of which it is a creditor against claims, liabilities, expenses, and costs necessarily incurred by him in connection with the defense, compromise, or settlement of any action, suit, or proceeding, civil or criminal, in which he is made a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit, or proceeding to be liable for negligence or misconduct in the performance of duty to the corporation; and to make any other indemnification that shall be authorized by the articles of incorporation or by any bylaw or resolution promulgated by the incorporator or his successor;

(15) to pay pensions and retirement benefits and establish pension plans, pension trusts, insurance plans, and incentive plans for all or any of its officers and employees;

(16) to cease its corporate activities and surrender its corporate franchise;

(17) to have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

History: **En. Sec. 6, Ch. 301, L. 1967; R.C.M. 1947, 15-2406.**

Cross-References

U.C.C. — investment securities, Title 30, ch. 8.

Securities Act of Montana, Title 30, ch. 10.

Exempt securities, 30-10-104.

General powers of business corporations, 35-1-108.

General powers of nonprofit corporations, 35-2-107.

35-3-206. Amendment of articles of incorporation. (1) Whenever any bishop, chief priest, or presiding elder shall have filed in the office of the secretary of state articles of incorporation, under the provisions of an act entitled "An Act Authorizing and Regulating the Incorporation of Sole Corporations and Defining Their Powers", approved February 27, 1899, or amendments thereto or under this chapter, such corporation sole may amend its articles of incorporation from time to time in any and as many respects as may be desired, so long as its articles of incorporation as amended contain only such provisions as are lawful under this chapter.

(2) Such articles of amendment shall be promulgated by the incorporator or his successor by setting forth a statement of the facts authorizing such amendment and the date upon which said amendment was promulgated, and his affidavit that the same is a true copy or translation thereof shall be deemed a sufficient attestation thereof.

History: En. Sec. 10, Ch. 301, L. 1967; R.C.M. 1947, 15-2410.

Cross-References

Fees, 35-2-1001.

35-3-207. Succession. (1) In the event of the death or resignation from office of any bishop, chief priest, or presiding elder or of his transfer or removal therefrom by the person or body having the authority to remove him, his successor in office shall succeed to the powers, rights, and obligations of the office and shall become vested with the title to the property with like power and authority over the same and subject to all the legal liabilities and obligations with reference thereto.

(2) Succession shall be effected when the successor shall file in the office of the secretary of state the original or a copy or translation of his commission, certificate, or letters of appointment as such bishop, chief priest, or presiding elder, duly attested, and his affidavit that the same is a true copy or translation shall be deemed sufficient attestation thereof.

History: En. Sec. 7, Ch. 301, L. 1967; R.C.M. 1947, 15-2407.

35-3-208. Board of advisors or consultors — interim powers. The bishop, chief priest, or presiding elder of the corporation sole created hereby may appoint a board of advisors or consultors consisting of at least four persons of legal age and otherwise qualified according to the rules or discipline of the denomination, society, or church, which board, in addition to its advisory function, shall exercise the powers of the corporation upon the death, resignation, transfer, removal, or deprivation of office of the bishop, chief priest, or presiding elder and which shall elect an administrator to which it may delegate the executive and administrative functions of the corporation during the interim and until the successor bishop, chief priest, or presiding elder is appointed, elected, or qualified according to the rules or discipline of the denomination, society, or church.

History: En. Sec. 8, Ch. 301, L. 1967; amd. Sec. 1, Ch. 113, L. 1977; R.C.M. 1947, 15-2408.

35-3-209. Annual report. (1) Each corporation, subject to the provisions of this chapter, shall file within the time and in the manner prescribed by the Montana Nonprofit Corporation Act, an annual report on forms or in a computerized format prescribed by the secretary of state, setting forth:

(a) the name of the corporation and the name of the present incumbent chief corporate officer;

(b) the address of the registered office of the corporation in Montana and the name of its registered agent in Montana at that address;

(c) the names and respective addresses of the present members of the board of advisers or consultors of the corporation.

(2) The report must be executed by the chief corporate officer or by an attorney-in-fact acting under a power of attorney filed with the secretary of state by the chief corporate officer.

History: **En. Sec. 9, Ch. 301, L. 1967; R.C.M. 1947, 15-2409; amd. Sec. 3, Ch. 153, L. 1989.**

Compiler's Comments

1989 Amendment: In introductory clause of (1) inserted "on forms or in a computerized format prescribed by the secretary of state"; in (1)(b), in two places, substituted "Montana" for "in this state"; and made minor changes in style.

Cross-References

Corporations subject to provision, 35-3-102.

CHAPTER 4

MONTANA PROFESSIONAL CORPORATION ACT

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Chapter Cross-References

Professional and occupational licensing, Title 37.

Part 1

General

35-4-101 through 35-4-107. Repealed. Sec. 24, Ch. 399, L. 1983.

Compiler's Comments

Histories of Repealed Sections:

35-4-101. En. Sec. 4, Ch. 161, L. 1963; R.C.M. 1947, 15-2102.

35-4-102. En. Sec. 3, Ch. 161, L. 1963; R.C.M. 1947, 15-2101.

35-4-103. En. Sec. 5, Ch. 161, L. 1963; amd. Sec. 1, Ch. 56, L. 1965; amd. Sec. 1, Ch. 10, L. 1967; R.C.M. 1947, 15-2103.

35-4-104. En. Sec. 6, Ch. 161, L. 1963; R.C.M. 1947, 15-2104.

35-4-105. En. Sec. 16, Ch. 161, L. 1963; R.C.M. 1947, 15-2114(part).

35-4-106. En. Sec. 19, Ch. 161, L. 1963; R.C.M. 1947, 15-2116.

35-4-107. En. Sec. 7, Ch. 161, L. 1963; amd. Sec. 9, Ch. 62, L. 1977; R.C.M. 1947, 15-2105.

35-4-108. Short title. This chapter may be cited as the "Montana Professional Corporation Act".

History: **En. Sec. 1, Ch. 399, L. 1983.**

Cross-References

Short title, 35-1-101.

35-4-109. Definitions. As used in this chapter, unless the context otherwise requires, the following definitions apply:

(1) "Disqualified person" means any natural person, corporation, partnership, fiduciary, trust, association, government agency, or other entity that for any reason is or becomes ineligible under this chapter to own shares issued by a professional corporation.

(2) "Foreign professional corporation" means a corporation for profit organized for the purpose of rendering professional services under a law other than the laws of this state.

(3) "Licensing authority" means an officer, board, agency, court, or other authority in this state that has the power to issue a license or other legal authorization to render a professional service.

(4) "Professional corporation" or "domestic professional corporation" means a corporation for profit subject to the provisions of this chapter, except a foreign professional corporation.

(5) "Professional service" means any service that may lawfully be rendered only by persons licensed under a licensing law of this state and that may not lawfully be rendered by a corporation organized under the Montana Business Corporation Act.

(6) "Qualified person" means a natural person, general partnership, or professional corporation eligible under this chapter to own shares issued by a professional corporation.

History: **En. Sec. 2, Ch. 399, L. 1983.**

Cross-References

Definitions, 35-1-102.

Professions and Occupations, Title 37.

35-4-110. Application to existing corporations. (1) This chapter applies to each professional corporation organized prior to October 1, 1983. If such a corporation is required to amend its corporate name or purposes to comply with this chapter, it shall deliver one duly executed original and one copy of articles of amendment or restated articles of incorporation containing such amendments to the secretary of state within 90 days after October 1, 1983.

(2) Any corporation that is not a professional corporation may become subject to this chapter by delivering to the secretary of state one duly executed original and one copy of articles of amendment or restated articles of incorporation stating that the corporation elects to become subject to this chapter and containing such amendments of its corporate name or purposes as are required to comply with this chapter.

History: En. Sec. 3, Ch. 399, L. 1983.

35-4-111. Application of the Montana Business Corporation Act. The Montana Business Corporation Act applies to professional corporations, domestic and foreign, except to the extent its provisions are inconsistent with this chapter.

History: En. Sec. 4, Ch. 399, L. 1983.

Cross-References

Montana Business Corporation Act — applicability, 35-1-103.

Part 2

Organization and Regulation

Part Cross-References

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.

Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.

Formation of religious corporations sole, Title 35, ch. 3, part 2.

Formation and operation of business trusts, Title 35, ch. 5, part 2.

Formation of limited partnerships, Title 35, ch. 12, part 6.

Formation of mining partnerships, Title 35, ch. 13, part 1.

Formation, articles of incorporation, and bylaws of cooperative associations, Title 35, ch. 15, part 2.

Formation of agricultural associations, Title 35, ch. 16, part 2.

Formation of cooperative agricultural marketing associations, Title 35, ch. 17, part 2.

Formation, articles, and bylaws of rural cooperative utilities, Title 35, ch. 18, part 2.

Formation of cemetery associations, Title 35, ch. 20, part 1.

Organization of mausoleum and columbarium authorities, Title 35, ch. 21, part 2.

35-4-201 through 35-4-204. Repealed. Sec. 24, Ch. 399, L. 1983.

Compiler's Comments

Histories of Repealed Sections:

35-4-201. En. Sec. 14, Ch. 161, L. 1963; R.C.M. 1947, 15-2112; amd. Sec. 154, Ch. 575, L. 1981.

35-4-202. En. Sec. 11, Ch. 161, L. 1963; R.C.M. 1947, 15-2109.

35-4-203. En. Sec. 15, Ch. 161, L. 1963; R.C.M. 1947, 15-2113; amd. Sec. 8, Ch. 202, L. 1979.

35-4-204. En. Sec. 17, Ch. 161, L. 1963; R.C.M. 1947, 15-2115.

35-4-205. Purposes of corporation. Professional corporations may be organized under this chapter only for the purpose of rendering professional services and services ancillary thereto within a single profession, except that a professional corporation may be incorporated for the purpose of rendering professional services within two or more professions and for any purpose or purposes for which corporations may be organized under the Montana Business Corporation Act to the extent that such combination of professional purposes or professional and business purposes is permitted by the licensing laws and rules of this state applicable to such professions.

History: En. Sec. 6, Ch. 399, L. 1983.

Cross-References

Permissible purposes for incorporation, 35-1-107.

35-4-206. Corporate name. The name of a domestic or foreign professional corporation:

(1) must contain the words "professional corporation" or the abbreviation "P.C.";

(2) may not contain any word or phrase that indicates or implies that the corporation is organized for any purpose other than the purposes contained in its articles of incorporation;

(3) may not be the same as or deceptively similar to any assumed business name, limited partnership name, trademark, or service mark registered or reserved with the secretary of state or to the name of any domestic corporation existing under the laws of this state, any foreign corporation authorized to transact business in this state, a name the exclusive right to which is reserved in the manner provided in the Montana Business Corporation Act, or the name of a corporation that has in effect a registration of its corporate name as provided in the Montana Business Corporation Act. This subsection does not apply if:

(a) the similarity results from the use in the corporate name of personal names of shareholders or former shareholders or of natural persons who were associated with a predecessor entity; or

(b) the corporation files with the secretary of state either the written consent of such other corporation or holder of a reserved or registered name to use the same or a deceptively similar name and one or more words are added to make such name distinguishable from such other name or a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the corporation to the use of the name in this state; and

(4) must conform to rules promulgated by a licensing authority having jurisdiction of a professional service described in the articles of incorporation of the corporation.

History: En. Sec. 12, Ch. 399, L. 1983.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Assumed business names, trademarks, and related rights, Title 30, ch. 13.

Reservation of corporate name, 35-1-302.

Service of process on foreign corporation, 35-1-1014.

Professions and Occupations, Title 37.

35-4-207. Directors and officers. At least one-half of the combined directors and officers of a professional corporation, other than the secretary and the treasurer, must be qualified persons with respect to the corporation.

History: En. Sec. 13, Ch. 399, L. 1983.

Cross-References

Effect of issuance of certificate of incorporation, 35-1-204.

Classification of directors and staggered terms, 35-1-403.

35-4-208. Filing of articles with licensing authority. No professional corporation, domestic or foreign, may begin to render professional services in this state until it has filed a copy of its articles of incorporation with each licensing authority having jurisdiction of a type of professional service described in its articles of incorporation. Nothing in this chapter restricts or limits the authority or duty of a licensing authority with respect to natural persons rendering a professional service within the jurisdiction of the licensing authority or any law or rule pertaining to standards of professional conduct.

History: En. Sec. 5, Ch. 399, L. 1983.

35-4-209. Annual reports and statements. (1) The annual report of each domestic professional corporation and each foreign professional corporation authorized to transact business in this state filed with the secretary of state pursuant to the Montana Business Corporation Act must include a statement that all the shareholders, not less than one-half the directors, and all the officers other than the secretary and treasurer of the corporation are qualified persons with respect to the corporation.

(2) Each domestic professional corporation and each foreign professional corporation authorized to transact business in this state must annually file before March 1 with each licensing authority having jurisdiction over a professional service of a type described in its articles of incorporation a statement of qualification setting forth the names and addresses of the directors and officers of the corporation and such additional information as the licensing authority may by rule prescribe as appropriate in determining whether the corporation is complying with the provisions of this chapter and rules promulgated under this chapter. The licensing authority may charge a fee to cover the cost of filing a statement of qualification.

History: En. Sec. 23, Ch. 399, L. 1983.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

35-4-210 reserved.

35-4-211 through 35-4-216. Repealed. Sec. 24, Ch. 399, L. 1983.

Compiler's Comments

Histories of Repealed Sections:

35-4-211. En. Sec. 13, Ch. 161, L. 1963; R.C.M. 1947, 15-2111; amd. Sec. 9, Ch. 202, L. 1979.

35-4-212. En. Sec. 16, Ch. 161, L. 1963; R.C.M. 1947, 15-2114(part).

35-4-213. En. Sec. 8, Ch. 161, L. 1963; R.C.M. 1947, 15-2106.

35-4-214. En. Sec. 9, Ch. 161, L. 1963; R.C.M. 1947, 15-2107.

35-4-215. En. Sec. 10, Ch. 161, L. 1963; R.C.M. 1947, 15-2108.

35-4-216. En. Sec. 12, Ch. 161, L. 1963; R.C.M. 1947, 15-2110.

Part 3

Shares and Shareholders

35-4-301. Issuance and transfer of shares. (1) A professional corporation may issue shares, fractional shares, and rights or options to purchase shares only to:

(a) natural persons authorized by law of this or any other state, a territory of the United States, or the District of Columbia to render a professional service permitted by the articles of incorporation of the corporation;

(b) general partnerships in which all the partners are authorized by law of this or any other state, a territory of the United States, or the District of Columbia to render a professional service permitted by the articles of incorporation and in which at least one partner is authorized by law in this state to render a professional service permitted by the articles of incorporation of the corporation; and

(c) professional corporations, domestic or foreign, authorized by law in this state to render a professional service permitted by the articles of incorporation of the corporation.

(2) The licensing authority may by rule further restrict or condition the issuance of shares in order to preserve ethical standards, but no rule may cause a person holding shares at the time the rule becomes effective to become a disqualified person.

(3) A shareholder of a professional corporation may transfer or pledge shares, fractional shares, and rights or options to purchase shares of the corporation only to natural persons, general partnerships, and professional corporations qualified to hold shares issued directly to them by the corporation. This subsection does not prohibit the transfer of shares of a professional corporation by operation of law or court decree.

(4) Each certificate representing shares of a professional corporation must state conspicuously upon its face that the shares are subject to restrictions on transfer imposed by this chapter and to restrictions on transfer imposed by the licensing authority pursuant to this chapter.

(5) Any issuance or transfer of shares in violation of this section or a rule promulgated under this section is void.

History: **En. Sec. 14, Ch. 399, L. 1983.**

Cross-References

Liability of subscribers and shareholders, 35-1-510.

Shareholders preemptive rights, 35-1-511.

Issuance of shares of preferred or special classes in series — filing of statement, 35-1-602.

Expenses of organization, reorganization, and financing, 35-1-609.

Duties of boards, 37-1-131.

35-4-302. Corporation's right to acquire its own shares. A professional corporation may purchase its own shares from a disqualified person without regard to the availability of capital or surplus for such purchase; however, no purchase of or payment for its own shares may be made at a time when the corporation is insolvent or if purchase or payment would make it insolvent.

History: **En. Sec. 15, Ch. 399, L. 1983.**

Cross-References

Defense of ultra vires, 35-1-110.

35-4-303. Proxies and voting trusts. No proxy for shares of a professional corporation is valid unless given to a qualified person. A voting trust for shares of a professional corporation is invalid unless all trustees and beneficiaries are qualified persons, except that a voting trust is valid for 10 months after the death of a deceased beneficiary or for 5 months after a beneficiary has become a disqualified person.

History: En. Sec. 18, Ch. 399, L. 1983.

Cross-References

Board of Directors, 35-1-401.

Number, election, and term of directors, 35-1-402.

35-4-304 through 35-4-310 reserved.

35-4-311. Death or disqualification of a shareholder. (1) Upon the death of a shareholder of a professional corporation or if a shareholder of a professional corporation becomes a disqualified person or if shares of a professional corporation are transferred by operation of law or court decree to a disqualified person, the shares may be transferred to a qualified person and if not so transferred must be purchased or redeemed by the corporation to the extent that the corporation has funds legally available for the purchase.

(2) If the share price is not fixed by the articles of incorporation or bylaws of the corporation or by private agreement, the corporation must within 6 months after such death or 30 days after such disqualification or transfer to a disqualified person make a written offer to pay for the shares at a specified price considered by the corporation to be the fair value thereof as of the date of death, disqualification, or transfer. The offer must be given to the personal representative of the estate of a deceased shareholder or to the disqualified shareholder or transferee and must be accompanied by both a balance sheet of the corporation as of the latest available date and not more than 12 months prior to the offer and a profit and loss statement of the corporation for the 12-month period ending on the date of the balance sheet.

(3) If the fair value of the shares is agreed upon within 30 days after the date of the written offer, payment must be made within 60 days after the date of the offer or within such other period as the parties fix by agreement and upon surrender of the certificate or certificates representing such shares. Upon payment the transferor ceases to have any interest in such shares.

(4) If the fair value is not agreed upon within 30 days after the date of the written offer, the corporation must within the next 30 days file a petition in the district court of the county in this state where the registered office of the corporation is located, requesting that the fair value of such shares be found and determined. If the corporation fails or refuses to institute the proceeding, the disqualified person may do so. The disqualified person must be made a party to a proceeding brought by the corporation, and a copy of the petition must be served on the disqualified person if a resident of this state and must be served by certified mail if a nonresident. Service on nonresidents must also be made by publication as provided by law. The jurisdiction of the court is plenary and exclusive. The disqualified person is entitled to judgment against the corporation for the fair value of his shares as of the date of death, disqualification, or transfer and upon payment of the judgment must surrender to the corporation the certificates representing the shares. The court may in its discretion order that judgment be paid in installments determined by

the court and may appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value.

(5) The judgment must include interest from the date of death, disqualification, or transfer, at a rate the court finds equitable under the circumstances.

(6) The costs and expenses of a proceeding must be determined by the court and either assessed against the corporation or assessed as the court considers equitable if the court finds that an agreed share value was not reached because the disqualified person was arbitrary or vexatious or did not act in good faith. Expenses include reasonable compensation for and expenses of the appraisers, but do not include fees and expenses of counsel for and experts employed by any party, except that if the court determines that the fair value of shares materially exceeds the amount the corporation offered therefor or if no offer was made, the court may award to the disqualified person reasonable compensation for any expert employed by the disqualified person.

(7) If a purchase, redemption, or transfer of shares is not completed within 10 months after the death of the deceased shareholder or 5 months after the disqualification or transfer, the corporation shall cancel the shares on its books and the disqualified person has no further interest as a shareholder other than his right under this section to payment for such shares.

(8) Shares acquired by a corporation upon payment of their agreed value or payment of a judgment decreeing their fair value may be held and disposed of as in the case of other treasury shares.

(9) This section does not apply to shares of a disqualified person if the period of disqualification is less than 5 months.

(10) Any provision regarding purchase, redemption, or transfer of shares of a professional corporation contained in the articles of incorporation, the bylaws, or any private agreement is specifically enforceable in the courts of this state.

(11) This section does not prevent or relieve a professional corporation from paying pension benefits or other deferred compensation for services rendered to or on behalf of a former shareholder as otherwise permitted by law.

History: En. Sec. 16, Ch. 399, L. 1983.

Cross-References

Revocation of voluntary dissolution proceedings by consent of shareholders, 35-1-907.

35-4-312. Amendment of articles of incorporation by personal representative of sole shareholder's estate. A personal representative, guardian, conservator, or receiver of the estate of a shareholder of a professional corporation who holds all of the outstanding shares of the corporation may amend the articles of incorporation by signing a written consent to amendment. The articles of amendment must be executed in duplicate by the personal representative, guardian, conservator, or receiver and by the secretary or assistant secretary of the corporation, verified by one of the persons signing the articles, and must set forth:

(1) the name of the corporation;

(2) the amendments adopted;

(3) the date of adoption of the amendments; and

(4) the number of shares outstanding.

History: En. Sec. 17, Ch. 399, L. 1983.

Cross-References

Restated articles of incorporation, 35-1-213.

Duty of Secretary of State to certify copy of articles or amendments, 35-1-1305.

Part 4

Operation

35-4-401. General powers. (1) A professional corporation has the powers enumerated in the Montana Business Corporation Act, except that it may be a promoter, general partner, member, associate, or manager only of a partnership, joint venture, trust, or other enterprise engaged only in rendering professional services or carrying on business permitted by the articles of incorporation of the professional corporation.

(2) A professional corporation may invest its funds in real estate, mortgages, stocks, bonds, or any other type of investment.

History: En. Sec. 8, Ch. 399, L. 1983.

Cross-References

General powers, 35-1-108.

35-4-402. Prohibited activities. A professional corporation may not engage in any profession or business other than the profession or professions and business permitted by its articles of incorporation.

History: En. Sec. 7, Ch. 399, L. 1983.

35-4-403. Rendering services. A professional corporation, domestic or foreign, may render professional services in this state only through natural persons permitted to render such services in this state; however, nothing in this chapter requires any person employed by a professional corporation to be licensed to perform services for which no license is otherwise required or prohibits the rendering of professional services by a licensed natural person acting in his individual capacity, even if such person is a shareholder, director, officer, employee, or agent of a professional corporation, domestic or foreign.

History: En. Sec. 9, Ch. 399, L. 1983.

35-4-404. Responsibility for services. (1) An individual who renders professional services as an employee of a domestic or foreign professional corporation is liable for any negligent or wrongful act or omission in which he personally participates to the same extent as if he had rendered such services as a sole practitioner. An employee of a professional corporation is not liable for the conduct of other employees unless he is at fault in appointing, supervising, or cooperating with them.

(2) A domestic or foreign professional corporation whose employee performs professional services within the scope of his employment or apparent authority to act for the corporation is liable to the same extent as that employee.

(3) Except as otherwise provided by statute, the personal liability of a shareholder of a domestic or foreign professional corporation is no greater in

any respect than that of a shareholder of a corporation organized under the Montana Business Corporation Act.

History: **En. Sec. 10, Ch. 399, L. 1983.**

Cross-References

Montana Medical Legal Panel Act, Title 27, ch. 6.

Bylaws — power in directors — content, 35-1-214.

Disciplinary authority of boards — injunctions, 37-1-136.

35-4-405. Relationship to clients or patients — privileged communications. (1) The relationship between an individual performing professional services as an employee of a professional corporation, domestic or foreign, and a client or patient is the same as if the individual performed such services as a sole practitioner.

(2) The relationship between a professional corporation, domestic or foreign, performing professional services and the client or patient is the same as between the client or patient and the individual performing the services.

(3) Any privilege applicable to communications between a person rendering professional services and the person receiving the services recognized under the statutory or common law of this state extends to a professional corporation, domestic or foreign, and its employees.

History: **En. Sec. 11, Ch. 399, L. 1983.**

Cross-References

Privileges, Title 26, ch. 1, part 8.

35-4-406 through 35-4-410 reserved.

35-4-411. Admission of foreign professional corporations — application — revocation. (1) A foreign professional corporation is entitled to a certificate of authority to transact business in this state only if:

(a) the name of the corporation meets the requirements of 35-4-206;

(b) the corporation is organized only for purposes for which a professional corporation may be organized under this chapter; and

(c) all the shareholders, not less than one-half the directors, and all the officers other than the secretary and treasurer of the corporation are qualified persons with respect to the corporation.

(2) No foreign professional corporation is required to obtain a certificate of authority to transact business in this state unless it maintains an office in this state for the conduct of business or professional practice.

(3) The application for a certificate of authority must include a statement that all the shareholders, not less than one-half the directors, and all the officers other than the secretary and treasurer are licensed in at least one state or territory or the District of Columbia to render a professional service described in the statement of purposes of the corporation.

(4) The certificate of authority may be revoked by the secretary of state if the corporation fails to comply with any provision of this chapter. The licensing authority shall certify to the secretary of state, from time to time, the names of all foreign professional corporations that have given cause for revocation, together with the facts pertinent thereto, and shall concurrently mail to each corporation at its registered office in this state a notice that such

certification has been made. No certificate of authority of a foreign professional corporation may be revoked unless there has been both 60 days' notice of intent to revoke and a failure to correct the noncompliance during such 60 days.

History: **En. Sec. 22, Ch. 399, L. 1983.**

Cross-References

Registered office and registered agent of foreign corporation, 35-1-1012.

Part 5

Reorganization and Dissolution

35-4-501. Merger and consolidation. A professional corporation may merge or consolidate with another corporation, domestic or foreign, only if every shareholder of each corporation is qualified to be a shareholder of the surviving or new corporation. If the surviving or new corporation will render professional services in this state, it shall comply with this chapter.

History: **En. Sec. 19, Ch. 399, L. 1983.**

Cross-References

Sale of assets in regular course of business and mortgage or pledge of assets, 35-1-808.

Sale of assets not in regular course of business — shareholder approval, 35-1-809.

Voluntary dissolution by act of corporation — statement of intent, 35-1-903.

35-4-502. Termination of all professional services. If a professional corporation ceases to render professional services, it shall amend its articles of incorporation to delete from its stated purposes the rendering of professional services and to conform its corporate name to the requirements of the Montana Business Corporation Act. The corporation may then continue in existence as a corporation under the Montana Business Corporation Act and is no longer subject to this chapter.

History: **En. Sec. 20, Ch. 399, L. 1983.**

35-4-503. Involuntary dissolution. A professional corporation may be dissolved involuntarily as provided in Title 35, chapter 6.

History: **En. Sec. 21, Ch. 399, L. 1983.**

Cross-References

Discontinuance of liquidation proceedings, 35-1-925.

Decree of involuntary dissolution in proceedings to liquidate, 35-1-926.

CHAPTER 5

BUSINESS TRUSTS

Part 1 — General

35-5-101. Definition of business trust.
35-5-102. Classification of business trusts.
35-5-103. Applicability of general corporate law.
35-5-104. Business trust authorized as form of association.

Part 2 — Formation and Operation

35-5-201. Creating instrument — filing — consent of foreign business trust to laws and service of process.
35-5-202. Issuance of certificate or license — effect.
35-5-203. Amendment to creating instrument — filing.
35-5-204. Powers of business trust to be specified in instrument — binding effect of instrument.
35-5-205. Taxes and fees.

Chapter Cross-References
Agency, Title 28, ch. 10.
Trust code, Title 72, ch. 33 through 36.

Part 1

General

35-5-101. Definition of business trust. In this chapter, unless the context otherwise requires, "business trust" means an unincorporated association or trust of the type which at common law was known as a "business trust" or "Massachusetts trust", created by an instrument under which property is held and managed by trustees for the benefit and profit of such persons as are or may become the holders of transferable certificates evidencing beneficial interests in the trust estate.

History: En. Sec. 1, Ch. 277, L. 1967; R.C.M. 1947, 15-2501.

35-5-102. Classification of business trusts. Business trusts shall be either domestic or foreign. A domestic business trust is a business trust organized under the laws of this state. A foreign business trust includes every other business trust.

History: En. Sec. 2, Ch. 277, L. 1967; R.C.M. 1947, 15-2502.

35-5-103. Applicability of general corporate law. Any business trust shall be subject to such applicable provisions of law from time to time in effect with respect to domestic and foreign corporations, respectively. These shall include without limitation such applicable provisions of law as relate to the issuance of securities, filing of required statements and reports, service of process, general grants of power to act, withdrawal, right to sue and be sued, limitation of individual liability of shareholders, and rights to acquire, mortgage, sell, lease, operate, and otherwise deal in or with real property.

History: En. Sec. 8, Ch. 277, L. 1967; R.C.M. 1947, 15-2508.

Cross-References
General corporate law — applicability, Title 35, ch. 1.

35-5-104. Business trust authorized as form of association. A business trust is permitted as a recognized form of association for the conduct of business within this state.

History: En. Sec. 3, Ch. 277, L. 1967; R.C.M. 1947, 15-2503.

Part 2

Formation and Operation

Part Cross-References

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.

Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.

Formation of religious corporations sole, Title 35, ch. 3, part 2.

Organization of professional service corporations, Title 35, ch. 4, part 2.

Formation of limited partnerships, Title 35, ch. 12, part 6.

Formation of mining partnerships, Title 35, ch. 13, part 1.

Formation, articles of incorporation, and bylaws of cooperative associations, Title 35, ch. 15, part 2.

Formation of agricultural associations, Title 35, ch. 16, part 2.

Formation of cooperative agricultural marketing associations, Title 35, ch. 17, part 2.

Formation, articles, and bylaws of rural cooperative utilities, Title 35, ch. 18, part 2.

Formation of cemetery associations, Title 35, ch. 20, part 1.

Organization of mausoleum and columbarium authorities, Title 35, ch. 21, part 2.

35-5-201. Creating instrument — filing — consent of foreign business trust to laws and service of process. (1) Any business trust desiring to transact business in this state shall file with the secretary of state:

(a) an executed copy of its articles, declarations of trust, or trust agreement by which the trust was created and all amendments thereto or a true copy thereof certified to be such by a trustee of the trust before an official authorized to administer oaths or by a public official of another state, territory, or country in whose office an executed copy thereof is on file. The true copy shall be verified within 60 days before it is filed with the secretary of state.

(b) a verified list of the names, residences, and post-office addresses of its trustees;

(c) an affidavit setting forth its assumed business name, if any.

(2) A foreign business trust shall file a verified application in the office of the secretary of state as provided in the case of foreign corporations under 35-1-1008 and shall file a copy of its articles, declaration of trust, or trust agreement by which it was created, certified by the secretary of state, in the office of the county clerk of the county where its principal office or place of business in this state will be located. The foreign business trust shall also file, at the same time and in the same office, a certificate certifying that it has consented to all the license laws and other laws of the state of Montana relative to foreign corporations and has consented to be sued in the courts of this state, upon all causes of action arising against it in this state and that service of process may be made upon some person, a citizen of this state whose principal place of business is designated in such certificate. Service of process, when made upon such agent, is valid service on the business trust.

History: En. Sec. 4, Ch. 277, L. 1967; amd. Sec. 13, Ch. 62, L. 1977; R.C.M. 1947, 15-2504(1), (2).

Cross-References

Assumed business names, Title 30, ch. 13, part 2.

Exclusivity of corporate name, 30-13-202.

Business corporation, corporate name, Title 35, ch. 1, part 3.

Foreign corporation, corporate name, 35-1-1006.

Service of process on foreign corporation, 35-1-1014.

Nonprofit corporation, corporate name, 35-2-301.

Foreign nonprofit corporation, corporate name, 35-2-805, 35-2-806.

Acquisition of new name by dissolved corporation upon reinstatement, 35-6-203.

Restrictions on limited partnership names, 35-12-505.

Rural cooperative utility names, 35-18-201.

35-5-202. Issuance of certificate or license — effect. Whenever a business trust has complied with the filing requirements as provided in 35-5-201, the secretary of state shall issue to a domestic business trust a certificate of organization or to a foreign business trust a license to do business in this state, and the business trust may thereupon commence business.

History: En. Sec. 4, Ch. 277, L. 1967; amd. Sec. 13, Ch. 62, L. 1977; R.C.M. 1947, 15-2504(3).

Cross-References

Fees, 35-1-1201, 35-1-1202.

35-5-203. Amendment to creating instrument — filing. The articles, declaration of trust, or trust agreement by which any business trust was created may be amended in the manner specified therein or in such manner as is valid under the law applicable to such business trust, provided that no such amendment shall be legally effective in this state until a copy thereof, certified as provided in 35-5-201(1)(a), has been filed with the secretary of state of Montana and a copy thereof, certified by the secretary of state, has been filed in the office of the county clerk and recorder in the county where the principal place of business of the trust is located.

History: En. Sec. 5, Ch. 277, L. 1967; R.C.M. 1947, 15-2505.

Cross-References

Fees, 35-1-1202.

35-5-204. Powers of business trust to be specified in instrument — binding effect of instrument. (1) Subject to the provisions of 35-5-205, the powers and authority of any business trust authorized under this chapter to transact business in this state shall be as specified in the instrument by which it was created, as amended, which instrument shall be construed and interpreted in accordance with the law applicable to such business trust, provided that no business trust shall engage in any activity in this state which would violate the public policy of this state or engage in any business in this state which private corporations for profit organized under the laws of this state may not legally transact.

(2) Subject to the limitations on power and authority as provided in subsection (1) of this section, any person dealing with a business trust authorized under this chapter to transact business in this state shall be bound by the terms and conditions of the instrument by which the business trust was created and by any amendments thereto which have been filed and recorded in compliance with 35-5-203.

History: En. Sec. 6, Ch. 277, L. 1967; R.C.M. 1947, 15-2506.

35-5-205. Taxes and fees. Any business trust created under this chapter or entering this state pursuant to this chapter shall pay such taxes and fees as are imposed by the laws, ordinances, and regulations of this state and any counties and municipalities thereof on domestic and foreign corporations, respectively, on an identical basis therewith.

History: En. Sec. 7, Ch. 277, L. 1967; R.C.M. 1947, 15-2507.

Cross-References

Corporate license tax, Title 15, ch. 31, part 1.

Corporate income tax, generally, Title 15, ch. 31, part 4.

CHAPTER 6

INVOLUNTARY CORPORATE DISSOLUTION

Part 1 — Dissolution by Secretary of State

35-6-101. Applicability to corporations presently in default.
35-6-102. Involuntary dissolution — grounds.
35-6-103. Defaulting corporations — penalties and forfeitures.
35-6-104. Involuntary dissolution — procedure.

Part 2 — Reinstatement

35-6-201. Reinstatement of dissolved corporation.
35-6-202. Relation back of corporate rights restored.
35-6-203. Acquisition of new name by corporation upon reinstatement.

Chapter Cross-References

General corporate law — applicability, 35-1-103.

Montana Nonprofit Corporation Act — applicability, 35-2-103.

Part 1

Dissolution by Secretary of State

Part Cross-References

Dissolution and liquidation of business corporations, Title 35, ch. 1, part 9.

Dissolution and liquidation of nonprofit corporations, Title 35, ch. 2, part 7.

Dissolution and winding up of partnerships in general, Title 35, ch. 10, part 6.

Dissolution of limited partnerships, Title 35, ch. 12, part 12.

Sale or disposition of assets of cooperative associations, 35-15-506.

Sale or disposition of assets of cooperative agricultural marketing associations, 35-17-506.

Dissolution of rural cooperative utilities, 35-18-404, 35-18-405.

35-6-101. Applicability to corporations presently in default. The secretary of state may initiate procedures consistent with this chapter to dissolve corporations that have been in default prior to July 1, 1977.

History: En. 15-2706 by Sec. 6, Ch. 455, L. 1977; R.C.M. 1947, 15-2706.

Cross-References

Defense of ultra vires, 35-1-110, 35-2-110.

35-6-102. Involuntary dissolution — grounds. (1) Any domestic corporation, whether for profit or not for profit, may be dissolved involuntarily by order of the secretary of state when:

(a) the corporation has failed to file its annual report within the time required by law or failed to remit any fees required by law;

(b) the corporation procured its certificate of incorporation through fraud;

(c) the corporation has exceeded or abused the authority conferred upon it by law and such excesses or abuses have continued after a written notice specifying the manner in which the corporation has exceeded or abused such authority has been received by the registered agent of the corporation from the secretary of state;

(d) the corporation has failed for 60 days to appoint and maintain a registered agent in this state; or

(e) the corporation has failed for 60 days after change of its registered office or registered agent to file in the office of the secretary of state a statement of such change.

(2) If dissolution is sought under subsection (1)(b) or (1)(c) of this section, the secretary of state may so dissolve only when such fact is established by an order of the district court. In addition to other persons so authorized by law, the secretary of state or the attorney general may maintain an action in the district court to implement the provisions of this section.

History: En. Sec. 87, Ch. 300, L. 1967; Sec. 15-2287, R.C.M. 1947; amd. and redes. 15-2701 by Sec. 1, Ch. 455, L. 1977; R.C.M. 1947, 15-2701.

35-6-103. Defaulting corporations — penalties and forfeitures. A corporation which is guilty of any of the actions or omissions described in 35-6-102(1) is in default. The defaulting corporation may, by reason of such default, be dissolved involuntarily by an order of the secretary of state in accordance with the provisions of this chapter and thereby forfeit its right to transact any business within the state.

History: En. 15-2702 by Sec. 2, Ch. 455, L. 1977; R.C.M. 1947, 15-2702.

35-6-104. Involuntary dissolution — procedure. (1) On or before April 1, August 1, and September 1 of each year, the secretary of state shall compile a list of defaulting corporations, together with the amount of any filing fee, penalty, or costs remaining unpaid.

(2) The secretary of state shall give notice to the defaulting corporations by causing such list to be posted in the state capitol for a period of at least 90 days and:

(a) by mailing a letter addressed to the corporation in care of its registered agent or any director or officer; or

(b) by publication of a general notice to all Montana corporations once a month for 3 consecutive months in a newspaper of general circulation in Lewis and Clark County.

(3) The notice referred to in subsection (2) shall specify the fact of the proposed dissolution and state that unless the grounds for dissolution described in 35-6-102 have been rectified within 90 days following the posting and mailing or publication of notice:

(a) the secretary of state will dissolve such defaulting corporations;

(b) such corporations will forfeit the amount of any tax, penalty, or costs to the state of Montana; and

(c) such corporations will forfeit their rights to carry on business within the state.

(4) After 90 days following posting and mailing or publication of each notice, the secretary of state may, by order, dissolve all corporations which have not satisfied the requirements of applicable law and compile a full and complete list containing the names of all corporations that have been so dissolved. The secretary of state shall immediately give notice to the dissolved corporation as specified in subsection (2) of this section.

(5) In the case of involuntary dissolution, all the property and assets of the dissolved corporation shall be held in trust by the directors of such corporation and 35-1-921 or 35-2-711, whichever is appropriate, is applicable to liquidate such property and assets if necessary.

History: **En. 15-2703 by Sec. 3, Ch. 455, L. 1977; R.C.M. 1947, 15-2703; amd. Sec. 4, Ch. 78, L. 1979.**

Part 2

Reinstatement

35-6-201. Reinstatement of dissolved corporation. (1) The secretary of state may:

(a) reinstate any corporation which has been dissolved under the provisions of this chapter; and

(b) restore to such corporation its right to carry on business in this state and to exercise all its corporate privileges and immunities.

(2) A corporation applying for reinstatement shall submit to the secretary of state one original and one copy of the application, executed by a person who was an officer or director at the time of dissolution, setting forth:

(a) the name of the corporation;

(b) a statement that the assets of the corporation have not been liquidated pursuant to 35-1-921 or 35-2-711;

(c) a statement that not less than a majority of its directors have authorized the application for reinstatement; and

(d) if its corporate name has been legally acquired by another corporation prior to its application for reinstatement, the corporate name under which the corporation desires to be reinstated.

(3) The corporation shall submit with its application for reinstatement:

(a) a certificate from the department of revenue stating that all taxes imposed pursuant to Title 15 have been paid; and

(b) a filing fee in an amount equal to one-half of the filing and license fees which the corporation would be required to pay if the corporation were filing its articles of incorporation.

(4) When all requirements are met and the secretary of state reinstates the corporation to its former rights, he shall:

(a) conform and file in his office reports, statements, and other instruments submitted for reinstatement;

(b) immediately issue and deliver to the corporation so reinstated a certificate of reinstatement authorizing it to transact business; and

(c) upon demand, issue to the corporation one or more certified copies of such certificate of reinstatement.

(5) The secretary of state may not order a reinstatement if 5 years have elapsed since the dissolution.

History: **En. 15-2704 by Sec. 4, Ch. 455, L. 1977; R.C.M. 1947, 15-2704(1) thru (4), (6); amd. Sec. 5, Ch. 78, L. 1979; amd. Sec. 51, Ch. 131, L. 1983; amd. Sec. 30, Ch. 174, L. 1983.**

Cross-References

State tax clearance certificate, 35-1-928.

35-6-202. Relation back of corporate rights restored. Any restoration of corporate rights pursuant to this chapter relates back to the date the corporation was involuntarily dissolved, and the corporation shall be considered to have been an existing legal entity from the date of its original incorporation.

History: **En. 15-2704 by Sec. 4, Ch. 455, L. 1977; R.C.M. 1947, 15-2704(5).**

35-6-203. Acquisition of new name by corporation upon reinstatement. In all cases where a corporation is dissolved under the provisions of this chapter or has, prior to July 1, 1977, been dissolved under other law and the corporate name of that corporation has been legally acquired by another corporation prior to the application for reinstatement of such dissolved corporation, such dissolved corporation shall in its application for reinstatement submit to the secretary of state some other name under which it desires its corporate existence to be reinstated. If that name is sufficiently distinctive and different from all existing corporations, the secretary of state shall issue to such reinstated corporation a certificate of reinstatement under the new name.

History: **En. 15-2705 by Sec. 5, Ch. 455, L. 1977; R.C.M. 1947, 15-2705.**

Cross-References

Assumed business names, Title 30, ch. 13, part 2.

Exclusivity of corporate name, 30-13-202.

Business corporation, corporate name, Title 35, ch. 1, part 3.

Foreign corporation, corporate name, 35-1-1006.

Nonprofit corporation, corporate name, 35-2-301.

Foreign nonprofit corporation, corporate name, 35-2-805, 35-2-806.

Business trust name, 35-5-201.

Restrictions on limited partnership names, 35-12-505.

Rural cooperative utility names, 35-18-201.

CHAPTERS 7 AND 8

RESERVED

CHAPTER 9

MONTANA CLOSE CORPORATION ACT

Part 1 — General

35-9-101. Short title.
35-9-102. Application of Montana Business Corporation Act and Montana Professional Corporation Act.
35-9-103. Definition and election of statutory close corporation status.

Part 2 — Share Transfer Restrictions

35-9-201. Notice of statutory close corporation status on issued shares.
35-9-202. Share transfer prohibition.
35-9-203. Share transfer after first refusal by corporation.
35-9-204. Attempted share transfer in breach of prohibition.
35-9-205. Compulsory purchase of shares after death of shareholder.
35-9-206. Exercise of compulsory purchase right.
35-9-207. Court action to compel purchase.
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Part 3 — Regulation and Operation

35-9-301. Shareholder agreements.
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35-9-303. Bylaws.
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Part 4 — Reorganization and Dissolution

35-9-401. Merger — share exchange — sale of assets.
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35-9-403. Effect of termination of statutory close corporation status.
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Part 5 — Shareholder Protection

35-9-501. Court action to protect shareholders.
35-9-502. Ordinary relief.
35-9-503. Extraordinary relief — share purchase.
35-9-504. Extraordinary relief — dissolution.

Part 1

General

35-9-101. Short title. This chapter shall be known and may be cited as the "Montana Close Corporation Act".

History: En. Sec. 1, Ch. 432, L. 1987.

35-9-102. Application of Montana Business Corporation Act and Montana Professional Corporation Act. (1) The Montana Business Corporation Act applies to statutory close corporations to the extent not inconsistent with the provisions of this chapter.

(2) This chapter applies to a professional corporation organized under the Montana Professional Corporation Act whose articles of incorporation contain the statement required by 35-9-103 except insofar as the Montana Professional Corporation Act contains inconsistent provisions.

(3) This chapter does not repeal or modify any statute or rule of law that applies to a corporation that is organized under the Montana Business Corporation Act or the Montana Professional Corporation Act and that does not elect to become a statutory close corporation under 35-9-103.

History: En. Sec. 2, Ch. 432, L. 1987.

Cross-References

Montana Business Corporation Act definitions, 35-1-102.

35-9-103. Definition and election of statutory close corporation status. (1) A statutory close corporation is a corporation whose articles of incorporation contain a statement that the corporation is a statutory close corporation.

(2) A corporation having 25 or fewer shareholders may become a statutory close corporation by amending its articles of incorporation to include the

statement required by subsection (1). The amendment must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. If the amendment is adopted, a shareholder who voted against the amendment is entitled to assert dissenters' rights under 35-1-810 and 35-1-812.

History: En. Sec. 3, Ch. 432, L. 1987.

Cross-References

Articles of incorporation, 35-1-202.

Amendment of articles of incorporation, 35-1-206 through 35-1-212.

Part 2

Share Transfer Restrictions

35-9-201. Notice of statutory close corporation status on issued shares. (1) The following statement must appear conspicuously on each share certificate issued by a statutory close corporation:

The rights of shareholders in a statutory close corporation may differ materially from the rights of shareholders in other corporations. Copies of the articles of incorporation and bylaws, shareholders' agreements, and other documents, any of which may restrict transfers and affect voting and other rights, may be obtained by a shareholder on written request to the corporation.

(2) Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the shareholders a written notice containing the information required by subsection (1).

(3) The notice required by this section satisfies all requirements of this chapter and of 35-1-617 that notice of share transfer restrictions be given.

(4) A person claiming an interest in shares of a statutory close corporation that has complied with the notice requirement of this section is bound by the documents referred to in the notice. A person claiming an interest in shares of a statutory close corporation that has not complied with the notice requirement of this section is bound by any documents of which he or a person through whom he claims has knowledge or notice.

(5) A corporation shall provide to any shareholder upon his written request and without charge copies of provisions that restrict transfer or affect voting or other rights of shareholders appearing in articles of incorporation, bylaws, or shareholders' or voting trust agreements filed with the corporation.

History: En. Sec. 4, Ch. 432, L. 1987.

Cross-References

Uncertificated shares, 35-1-610.

Share transfer restrictions, 35-1-617, 35-9-202.

Compulsory purchase of shares, 35-9-205 through 35-9-208.

Shareholder agreements, 35-9-301.

35-9-202. Share transfer prohibition. (1) An interest in shares of a statutory close corporation may not be voluntarily or involuntarily transferred, by operation of law or otherwise, except to the extent permitted by the articles of incorporation or under 35-9-203.

(2) Except to the extent the articles of incorporation provide otherwise, this section does not apply to a transfer:

(a) to the corporation or to any other holder of the same class or series of shares;

(b) to members of the shareholder's immediate family or to a trust, all of whose beneficiaries are members of the shareholder's immediate family, which immediate family consists of his spouse, parents, lineal descendants including adopted children and stepchildren and the spouse of any lineal descendant, and brothers and sisters;

(c) that has been approved in writing by all of the holders of the corporation's shares having general voting rights;

(d) to an executor or administrator upon the death of a shareholder or to a trustee or receiver as the result of a bankruptcy, insolvency, dissolution, or similar proceeding brought by or against a shareholder;

(e) by merger or share exchange under Title 35, chapter 1, part 8, or an exchange of existing shares for other shares of a different class or series in the corporation;

(f) by a pledge as collateral for a loan that does not grant the pledgee any voting rights possessed by the pledgor; and

(g) made after termination of the corporation's status as a statutory close corporation.

History: **En. Sec. 5, Ch. 432, L. 1987.**

Cross-References

"Shareholder" defined, 35-1-102.

Information on shares, 35-1-617, 35-9-201.

Merger and share exchange, 35-1-801, 35-1-803 through 35-1-807, 35-9-401.

Sale of assets, 35-1-808, 35-1-809, 35-9-401.

Corporation's purchase options, 35-9-203, 35-9-204.

Termination of statutory close corporation status, 35-9-402.

35-9-203. Share transfer after first refusal by corporation. (1) A person desiring to transfer shares of a statutory close corporation subject to the transfer prohibition of 35-9-202 must first offer them to the corporation by obtaining an offer to purchase the shares for cash from a third person who is eligible to purchase the shares under subsection (2). The offer by the third person must be in writing and state the offeror's name and address, the number and class or series of shares offered, the offering price per share, and the other terms of the offer.

(2) A third person is eligible to purchase the shares if:

(a) he is eligible to become a qualified shareholder under any federal or state tax statute the corporation has adopted and he agrees in writing not to terminate his qualification without the approval of the remaining shareholders; and

(b) his purchase of the shares will not impose a personal holding company tax or similar federal or state penalty tax on the corporation.

(3) The person desiring to transfer shares shall deliver the offer to the corporation and by doing so offers to sell the shares to the corporation on the terms of the offer. Within 20 days after the corporation receives the offer, the corporation shall call a special shareholders' meeting, to be held not more than 40 days after the call, to decide whether the corporation should purchase all but not less than all of the offered shares. The offer must be approved by the affirmative vote of the holders of a majority of votes entitled to be cast at the meeting, excluding votes in respect of the shares covered by the offer.

(4) The corporation must deliver to the offering shareholder written notice of acceptance within 75 days after receiving the offer or the offer is rejected.

If the corporation makes a counteroffer, the shareholder must deliver to the corporation written notice of acceptance within 15 days after receiving the counteroffer or the counteroffer is rejected. If the corporation accepts the original offer or the shareholder accepts the corporation's counteroffer, the shareholder shall deliver to the corporation duly endorsed certificates for the shares, or instruct the corporation in writing to transfer the shares if uncertificated, within 20 days after the effective date of the notice of acceptance. The corporation may specifically enforce the shareholder's delivery or instruction obligation under this subsection.

(5) A corporation accepting an offer to purchase shares under this section may allocate some or all of the shares to one or more of its shareholders or to other persons if all the shareholders voting in favor of the purchase approve the allocation. However, if the corporation has more than one class or series of shares, the remaining holders of the class or series of shares being purchased are entitled to a first option to purchase the shares not purchased by the corporation in proportion to their shareholdings or in some other proportion agreed to by all the shareholders participating in the purchase.

(6) If an offer to purchase shares under this section is rejected, the offering shareholder, for a period of 120 days after the corporation received his offer, is entitled to transfer to the third-person offeror all but not less than all of the offered shares in accordance with the terms of his offer to the corporation.

History: **En. Sec. 6, Ch. 432, L. 1987.**

Cross-References

Special shareholders' meetings, 35-1-501.

Acquisition of own shares, 35-1-612.

35-9-204. Attempted share transfer in breach of prohibition. (1) An attempt to transfer shares in a statutory close corporation in violation of a prohibition against transfer binding on the transferee is ineffective.

(2) An attempt to transfer shares in a statutory close corporation in violation of a prohibition against transfer that is not binding on the transferee, either because the notice required by 35-9-201 was not given or because the prohibition is held unenforceable by a court, gives the corporation an option to purchase the shares from the transferee for the same price and on the same terms that he purchased them. To exercise its option, the corporation must give the transferee written notice within 30 days after the shares are presented for registration in the transferee's name. The corporation may specifically enforce the transferee's sale obligation upon exercise of its purchase option.

History: **En. Sec. 7, Ch. 432, L. 1987.**

Cross-References

Share transfer restrictions, 35-1-617, 35-9-202.

35-9-205. Compulsory purchase of shares after death of shareholder. (1) This section and 35-9-206 through 35-9-208 apply to a statutory close corporation only if so provided in its articles of incorporation. If these sections apply, the executor or administrator of the estate of a deceased shareholder may require the corporation to purchase or cause to be purchased all but not less than all of the decedent's shares or to be dissolved.

(2) The provisions of 35-9-206 through 35-9-208 may be modified only if the modification is set forth or referred to in the articles of incorporation.

(3) An amendment to the articles of incorporation to provide for application of 35-9-206 through 35-9-208 or to modify or delete the provisions of these sections must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the statutory close corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. If the corporation has no shareholders when the amendment is proposed, it must be approved by at least two-thirds of the subscribers for shares, if any, or if none, by all of the incorporators.

(4) A shareholder who votes against an amendment to modify or delete the provisions of 35-9-206 through 35-9-208 is entitled to dissenters' rights under 35-1-810 and 35-1-812 if the amendment upon adoption terminates or substantially alters his existing rights under these sections to have his shares purchased.

(5) A shareholder may waive his and his estate's rights under 35-9-206 through 35-9-208 by a signed writing.

(6) Sections 35-9-206 through 35-9-208 do not prohibit any other agreement providing for the purchase of shares upon a shareholder's death, nor do they prevent a shareholder from enforcing any remedy he has independently of 35-9-206 through 35-9-208.

History: En. Sec. 8, Ch. 432, L. 1987.

Cross-References

Acquisition of own shares, 35-1-612, 35-1-711.

Court action to compel purchase, 35-9-206, 35-9-207.

35-9-206. Exercise of compulsory purchase right. (1) A person entitled and desiring to exercise the compulsory purchase right described in 35-9-205 shall deliver a written notice to the corporation, within 120 days after the death of the shareholder, describing the number and class or series of shares beneficially owned by the decedent and requesting that the corporation offer to purchase the shares.

(2) Within 20 days after the effective date of the notice, the corporation shall call a special shareholders' meeting, to be held not more than 40 days after the call, to decide whether the corporation should offer to purchase the shares. A purchase offer must be approved by the affirmative vote of the holders of a majority of votes entitled to be cast at the meeting, excluding votes in respect of the shares covered by the notice.

(3) The corporation shall deliver a purchase offer to the person requesting it within 75 days after the effective date of the request notice. A purchase offer must be accompanied by the corporation's balance sheet as of the end of a fiscal year ending not more than 16 months before the effective date of the request notice, an income statement for that year, a statement of changes in shareholders' equity for that year, and the latest available interim financial statements, if any. The person must accept the purchase offer in writing within 15 days after receiving it or the offer is rejected.

(4) A corporation agreeing to purchase shares under this section may allocate some or all of the shares to one or more of its shareholders or to other persons if all the shareholders voting in favor of the purchase offer approve the allocation. However, if the corporation has more than one class or series

of shares, the remaining holders of the class or series of shares being purchased are entitled to a first option to purchase the shares not purchased by the corporation in proportion to their shareholdings or in some other proportion agreed to by all the shareholders participating in the purchase.

(5) If price and other terms of a compulsory purchase of shares are fixed or are to be determined by the articles of incorporation, bylaws, or a written agreement, the price and terms so fixed or determined govern the compulsory purchase unless the purchaser defaults, in which event the buyer is entitled to commence a proceeding for dissolution under 35-9-207.

History: En. Sec. 9, Ch. 432, L. 1987.

Cross-References

Financial statement for shareholders, 35-1-513.

Court action to compel purchase, 35-9-207.

35-9-207. Court action to compel purchase. (1) (a) If an offer to purchase shares made under 35-9-206 is rejected or if no offer is made, the person exercising the compulsory purchase right may commence a proceeding against the corporation to compel the purchase in the district court of the county where the corporation's principal office is located or, if there is no principal office in this state, its registered office.

(b) The corporation at its expense shall notify in writing all of its shareholders, and any other person the court directs, of the commencement of the proceeding.

(c) The jurisdiction of the court in which the proceeding is commenced under this subsection is plenary and exclusive.

(2) (a) The court shall determine the fair value of the shares subject to compulsory purchase in accordance with the standards set forth in 35-9-503, together with terms for the purchase.

(b) Upon making these determinations, the court shall order the corporation to purchase or cause the purchase of the shares or empower the person exercising the compulsory purchase right to have the corporation dissolved.

(3) After the purchase order is entered, the corporation may petition the court to modify the terms of purchase and the court may do so if it finds that changes in the financial or legal ability of the corporation or other purchaser to complete the purchase justify a modification.

(4) If the corporation or other purchaser does not make a payment required by the court's order within 30 days of its due date, the seller may petition the court to dissolve the corporation and, absent a showing of good cause for not making the payment, the court shall do so.

(5) A person making a payment to prevent or cure a default by the corporation or other purchaser is entitled to recover the payment from the defaulter.

History: En. Sec. 10, Ch. 432, L. 1987.

Cross-References

Appraisal, 35-9-503.

35-9-208. Court costs and other expenses. (1) The court in a proceeding commenced under 35-9-207 shall determine the total costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court and of counsel and experts employed by the parties. Except as provided in subsection (2), the court shall assess these costs equally against the corporation and the party exercising the compulsory purchase right.

(2) The court may assess all or a portion of the total costs of the proceeding:

(a) against the person exercising the compulsory purchase right if the court finds that the fair value of the shares does not substantially exceed the corporation's last purchase offer made before commencement of the proceeding and that the person's failure to accept the offer was arbitrary, vexatious, or otherwise not in good faith; or

(b) against the corporation if the court finds that the fair value of the shares substantially exceeds the corporation's last sale offer made before commencement of the proceeding and that the offer was arbitrary, vexatious, or otherwise not made in good faith.

History: En. Sec. 11, Ch. 432, L. 1987.

Cross-References

Appraisal, 35-9-503.

Part 3

Regulation and Operation

35-9-301. Shareholder agreements. (1) All the shareholders of a statutory close corporation may agree in writing to regulate the exercise of the corporate powers and the management of the business and affairs of the corporation or the relationship among the shareholders of the corporation.

(2) An agreement authorized by this section is effective even though:

(a) it eliminates a board of directors;

(b) it restricts the discretion or powers of the board or authorizes director proxies or weighted voting rights;

(c) its effect is to treat the corporation as a partnership; or

(d) it creates a relationship among the shareholders or between the shareholders and the corporation that would otherwise be appropriate only among partners.

(3) If the corporation has a board of directors, an agreement authorized by this section restricting the discretion or powers of the board relieves directors of liability imposed by law and imposes that liability on each person in whom the board's discretion or power is vested to the extent that the discretion or powers of the board of directors are governed by the agreement.

(4) A provision eliminating a board of directors in an agreement authorized by this section is not effective unless the articles of incorporation contain a statement to that effect as required by 35-9-302.

(5) A provision entitling one or more shareholders to dissolve the corporation under 35-9-404 is effective only if a statement of this right is contained in the articles of incorporation.

(6) To amend an agreement authorized by this section, all the shareholders shall approve the amendment in writing unless the agreement provides otherwise.

(7) Subscribers for shares may act as shareholders with respect to an agreement authorized by this section if shares are not issued when the agreement was made.

(8) This section does not prohibit any other agreement between or among shareholders in a statutory close corporation.

History: **En. Sec. 12, Ch. 432, L. 1987.**

Cross-References

Voting agreements, 35-1-508.

Voting trusts, 35-1-508.

Subscriptions for shares, 35-1-603.

Elimination of Board of Directors, 35-9-302.

Dissolution at option of shareholder, 35-9-404.

35-9-302. Elimination of board of directors. (1) A statutory close corporation may operate without a board of directors if its articles of incorporation contain a statement to that effect.

(2) An amendment to articles of incorporation eliminating a board of directors must be approved by:

(a) all the shareholders of the corporation, whether or not otherwise entitled to vote on amendments;

(b) if no shares have been issued, by all the subscribers for shares, if any; or

(c) if there are no subscribers, by all the incorporators.

(3) While a corporation is operating without a board of directors as authorized by subsection (1):

(a) all corporate powers must be exercised by or under the authority of and the business and affairs of the corporation managed under the direction of the shareholders;

(b) unless the articles of incorporation provide otherwise:

(i) action requiring director approval or both director and shareholder approval is authorized if approved by the shareholders; and

(ii) action requiring a majority or greater percentage vote of the board of directors is authorized if approved by the majority or greater percentage of the votes of shareholders entitled to vote on the action;

(c) a shareholder is not liable for his act or omission, even though a director would be, unless the shareholder was entitled to vote on the action;

(d) a requirement by a state or the United States that a document delivered for filing contain a statement that specified action has been taken by the board of directors is satisfied by a statement that the corporation is a statutory close corporation without a board of directors and that the action was approved by the shareholders; and

(e) the shareholders may by resolution appoint one or more shareholders to sign documents as designated directors.

(4) An amendment to articles of incorporation deleting the statement eliminating a board of directors must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not otherwise entitled to vote on amendments. The amendment must also specify the number, names, and addresses of the corporation's directors or describe who will perform the duties of a board under 35-1-401 or 35-1-515.

History: **En. Sec. 13, Ch. 432, L. 1987.**

Cross-References
Incorporators, 35-1-201.
Number of directors, 35-1-402.
Subscriptions for shares, 35-1-603.

35-9-303. Bylaws. (1) A statutory close corporation need not adopt bylaws if provisions required by law to be contained in bylaws are contained in either the articles of incorporation or a shareholder agreement authorized by 35-9-301.

(2) If a corporation does not have bylaws when its statutory close corporation status terminates under 35-9-402, the corporation shall immediately adopt bylaws under 35-1-214.

History: En. Sec. 14, Ch. 432, L. 1987.

Cross-References
Bylaws, 35-1-214.
Shareholder agreements, 35-9-301.
Termination of statutory close corporation status, 35-9-402.

35-9-304. Annual meeting. (1) The annual meeting date for a statutory close corporation is the first business day after May 31 unless its articles of incorporation, bylaws, or a shareholder agreement authorized by 35-9-301 fixes a different date.

(2) A statutory close corporation need not hold an annual meeting unless one or more shareholders deliver written notice to the corporation requesting a meeting at least 30 days before the meeting date determined under subsection (1).

History: En. Sec. 15, Ch. 432, L. 1987.

35-9-305. Holding more than one office — execution of documents in more than one capacity. (1) An individual may hold more than one or all the offices of a statutory close corporation if the corporation's articles of incorporation contain a statement to that effect.

(2) An individual who holds more than one office in a statutory close corporation may execute or acknowledge in more than one capacity any document required to be executed or acknowledged by the holders of two or more offices.

History: En. Sec. 16, Ch. 432, L. 1987; amd. Sec. 1, Ch. 315, L. 1989.

Compiler's Comments
1989 Amendment: Inserted (1) allowing one person to hold all offices; in (2), at beginning, deleted "Notwithstanding any law to the contrary" and in two places, after references to acknowledgment, deleted references to verification; and made a minor change in style.

Cross-References
Holding two or more offices simultaneously, 35-1-410.

35-9-306. Limited liability. The failure of a statutory close corporation to observe the usual corporate formalities or requirements relating to the exercise of its corporate powers or management of its business and affairs is not a ground for imposing personal liability on the shareholders for liabilities of the corporation.

History: En. Sec. 17, Ch. 432, L. 1987.

Cross-References
Liability for preincorporation transactions, 35-1-109.
Elimination of Board of Directors, 35-9-302.
Dissolution at option of shareholder, 35-9-404.

Part 4

Reorganization and Dissolution

35-9-401. Merger — share exchange — sale of assets. (1) A plan of merger or share exchange:

(a) that if effected would terminate statutory close corporation status must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the statutory close corporation, voting as separate voting groups, whether or not the holders are otherwise entitled to vote on the plan; and

(b) that if effected would create the surviving corporation as a statutory close corporation must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the surviving corporation, voting as separate voting groups, whether or not the holders are otherwise entitled to vote on the plan.

(2) A sale, lease, exchange, or other disposition of all or substantially all of the property of a statutory close corporation, with or without the good will, if not made in the usual and regular course of business, must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not the holders are otherwise entitled to vote on the transaction.

History: **En. Sec. 18, Ch. 432, L. 1987.**

Cross-References

Merger, consolidation, share exchange, and sale of assets, Title 35, ch. 1, part 8.

35-9-402. Termination of statutory close corporation status. (1) A statutory close corporation may terminate its statutory close corporation status by amending its articles of incorporation to delete the statement that it is a statutory close corporation. If the statutory close corporation has elected to operate without a board of directors under 35-9-302, the amendment must either comply with 35-1-401 or 35-1-515 or delete the statement dispensing with the board of directors from its articles of incorporation.

(2) An amendment terminating statutory close corporation status must be approved by the holders of at least two-thirds of the votes of each class or series of shares of the corporation, voting as separate voting groups, whether or not the holders are otherwise entitled to vote on amendments.

(3) If an amendment to terminate statutory close corporation status is adopted, each shareholder who voted against the amendment is entitled to assert dissenters' rights under 35-1-810 and 35-1-812.

History: **En. Sec. 19, Ch. 432, L. 1987.**

Cross-References

Dissenters' rights, 35-1-810, 35-1-812.

Effect of termination, 35-9-403.

35-9-403. Effect of termination of statutory close corporation status. (1) A corporation that terminates its status as a statutory close corporation is thereafter subject to all provisions of the Montana Business Corporation Act or, if incorporated under the Montana Professional Corporation Act, to all provisions of that act.

(2) Termination of statutory close corporation status does not affect any right of a shareholder or of the corporation under an agreement or the articles of incorporation unless this chapter, the Montana Business Corporation Act, or another law of this state invalidates the right.

History: En. Sec. 20, Ch. 432, L. 1987.

35-9-404. Shareholder option to dissolve corporation. (1) The articles of incorporation of a statutory close corporation may authorize one or more shareholders, or the holders of a specified number or percentage of shares of any class or series, to dissolve the corporation at will or upon the occurrence of a specified event or contingency. The shareholder or shareholders exercising this authority shall give written notice of the intent to dissolve to all the other shareholders. Thirty-one days after the effective date of the notice, the corporation shall begin to wind up and liquidate its business and affairs and file articles of dissolution under 35-1-911 and 35-1-912.

(2) Unless the articles of incorporation provide otherwise, an amendment to the articles of incorporation to add, change, or delete the authority to dissolve described in subsection (1) must be approved by the holders of all the outstanding shares, whether or not otherwise entitled to vote on amendments, or if no shares have been issued, by all the subscribers for shares, if any, or if there are no subscribers, by all the incorporators.

History: En. Sec. 21, Ch. 432, L. 1987.

Cross-References

Dissolution and liquidation, Title 35, ch. 1, part 9.

Part 5

Shareholder Protection

35-9-501. Court action to protect shareholders. (1) Subject to satisfying the conditions of subsections (3) and (4), a shareholder of a statutory close corporation may petition the district court for any of the relief described in 35-9-502 through 35-9-504 if:

(a) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, fraudulent, or unfairly prejudicial to the petitioner, whether in his capacity as shareholder, director, or officer of the corporation;

(b) the directors or those in control of the corporation are deadlocked in the management of the corporation's affairs, the shareholders are unable to break the deadlock, and the corporation is suffering or will suffer irreparable injury or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally because of the deadlock; or

(c) there exists one or more grounds for judicial dissolution of the corporation under 35-1-921.

(2) A shareholder shall commence a proceeding under subsection (1) in the district court of the county where the corporation's principal office is located or, if there is no principal office in this state, its registered office. The jurisdiction of the court in which the proceeding is commenced is plenary and exclusive.

(3) If a shareholder has agreed in writing to pursue a nonjudicial remedy to resolve disputed matters, he may not commence a proceeding under this section with respect to the matters until he has exhausted the nonjudicial remedy.

(4) If a shareholder has dissenters' rights under this chapter or 35-1-810 and 35-1-812 with respect to proposed corporate actions, he must commence a proceeding under this section before he is required to give notice of his intent to demand payment under 35-1-810 or 35-1-812 or the proceeding is barred.

(5) Except as provided in subsections (3) and (4), a shareholder's right to commence a proceeding under this section and the remedies available under 35-9-502 through 35-9-504 are in addition to any other right or remedy he may have.

History: En. Sec. 22, Ch. 432, L. 1987.

Cross-References

Dissenters' rights, 35-1-810, 35-1-812.

Judicial dissolution, 35-1-921, 35-1-922.

Shareholder agreements, 35-9-301.

Relief, 35-9-502 through 35-9-504.

35-9-502. Ordinary relief. (1) If the court finds that one or more of the grounds for relief described in 35-9-501(1) exist, it may order one or more of the following types of relief:

(a) the performance, prohibition, alteration, or setting aside of any action of the corporation or of its shareholders, directors, or officers or any other party to the proceeding;

(b) the cancellation or alteration of any provision in the corporation's articles of incorporation or bylaws;

(c) the removal from office of any director or officer;

(d) the appointment of any individual as a director or officer;

(e) an accounting with respect to any matter in dispute;

(f) the appointment of a custodian to manage the business and affairs of the corporation;

(g) the appointment of a provisional director who has all the rights, powers, and duties of a duly elected director to serve for the term and under the conditions prescribed by the court;

(h) the payment of dividends;

(i) the award of damages to any aggrieved party.

(2) If the court finds that a party to the proceeding acted arbitrarily, vexatiously, or otherwise not in good faith, it may award one or more other parties their reasonable expenses, including counsel fees and the expenses of appraisers or other experts, incurred in the proceeding.

History: En. Sec. 23, Ch. 432, L. 1987.

35-9-503. Extraordinary relief — share purchase. (1) If the court finds that the ordinary relief described in 35-9-502(1) is or would be inadequate or inappropriate, it may order the corporation dissolved under 35-9-504 unless the corporation or one or more of its shareholders purchases all the shares of the shareholder for their fair value and on terms determined under subsection (2).

(2) If the court orders a share purchase, it shall:

(a) determine the fair value of the shares, considering among other relevant evidence:

(i) the going concern value of the corporation;

(ii) any agreement among some or all of the shareholders fixing the price or specifying a formula for determining share value for any purpose;

(iii) the recommendations of appraisers, if any, appointed by the court; and

(iv) any legal constraints on the corporation's ability to purchase the shares;

(b) specify the terms of the purchase, including if appropriate:

(i) terms for installment payments;

(ii) subordination of the purchase obligation to the rights of the corporation's other creditors;

(iii) security for a deferred purchase price; and

(iv) a covenant not to compete or other restriction on the seller;

(c) require the seller to deliver all his shares to the purchaser upon receipt of the purchase price or the first installment of the purchase price;

(d) provide that after the seller delivers his shares he has no further claim against the corporation, its directors, officers, or shareholders, other than a claim to any unpaid balance of the purchase price and a claim under any agreement with the corporation or the remaining shareholders that is not terminated by the court; and

(e) provide that if the purchase is not completed in accordance with the specified terms, the corporation is to be dissolved under 35-9-504.

(3) After the purchase order is entered, any party may petition the court to modify the terms of the purchase and the court may do so if it finds that changes in the financial or legal ability of the corporation or other purchaser to complete the purchase justify a modification.

(4) If the corporation is dissolved because the share purchase was not completed in accordance with the court's order, the selling shareholder has the same rights and priorities in the corporation's assets as if the sale had not been ordered.

History: En. Sec. 24, Ch. 432, L. 1987.

35-9-504. Extraordinary relief — dissolution. (1) The court may dissolve the corporation if it finds:

(a) one or more grounds for judicial dissolution under 35-1-921; or

(b) all other relief ordered by the court under 35-9-502 or 35-9-503 has failed to resolve the matters in dispute.

(2) In determining whether to dissolve the corporation, the court shall consider among other relevant evidence the financial condition of the corporation but may not refuse to dissolve solely because the corporation has accumulated earnings or current operating profits.

History: En. Sec. 25, Ch. 432, L. 1987.

CHAPTER 10

PARTNERSHIPS IN GENERAL

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Part 1

Preliminary Provisions

35-10-101. Short title. This chapter may be cited as "Uniform Partnership Act".

History: **En. Sec. 1, Ch. 251, L. 1947; R.C.M. 1947, 63-101.**

35-10-102. Definitions. In this chapter, the following definitions apply:

(1) "Bankrupt" includes bankrupt under the Federal Bankruptcy Act or insolvent under any state insolvency act.

(2) "Business" includes every trade, occupation, or profession.

(3) "Conveyance" includes every assignment, lease, mortgage, or encumbrance.

(4) "Court" includes every court and judge having jurisdiction in the case.

(5) "Person" includes individuals, partnerships, corporations, and other associations.

(6) "Real property" includes land and any interest or estate in land.

History: **En. Sec. 2, Ch. 251, L. 1947; R.C.M. 1947, 63-102.**

35-10-103. Interpretation of knowledge and notice. (1) A person has "knowledge" of a fact within the meaning of this chapter not only when he has actual knowledge thereof but also when he has knowledge of such other facts as in the circumstances show bad faith.

(2) A person has "notice" of a fact within the meaning of this chapter when the person who claims the benefit of the notice:

(a) states the fact to such person; or

(b) delivers through the mail or by other means of communication a written statement of the fact to such person or to a proper person at his place of business or residence.

History: **En. Sec. 3, Ch. 251, L. 1947; R.C.M. 1947, 63-103.**

35-10-104. Rules of construction. (1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.

(2) The law of estoppel shall apply under this chapter.

(3) The law of agency shall apply under this chapter.

(4) This chapter shall be so interpreted and construed as to effect its general purpose to make uniform the law of those states which enact it.

(5) This chapter shall not be construed so as to impair the obligations of any contract existing on July 1, 1947, or to affect any action or proceedings begun or right accrued before July 1, 1947.

History: **En. Sec. 4, Ch. 251, L. 1947; R.C.M. 1947, 63-104.**

Cross-References

Ex post facto, obligation of contracts, and irrevocable privileges, Art. II, sec. 31, Mont. Const.

Statutes in derogation of the common law — liberal construction, 1-2-103.

Agency, Title 28, ch. 10.

Unauthorized corporate acts — estoppel, 35-1-110, 35-2-110.

Partner by estoppel, 35-10-308.

35-10-105. Rules for cases not provided for in this chapter. In any case not provided for in this chapter, the rules of law and equity, including the law merchant, shall govern.

History: **En. Sec. 5, Ch. 251, L. 1947; R.C.M. 1947, 63-105.**

Cross-References

Equitable principles, Title 1, ch. 3.

Maxims of jurisprudence, Title 1, ch. 3, part 2.

Uniform Commercial Code, Title 30, ch. 1 through 9.

Part 2

Nature of Partnership

35-10-201. Partnership defined. (1) A partnership is an association of two or more persons to carry on as co-owners a business for profit.

(2) But any association formed under any other statute of this state or any statute adopted by authority other than the authority of this state is not a partnership under this chapter unless such association would have been a partnership in this state prior to the adoption of this chapter. But this chapter shall apply to limited partnerships except insofar as the statutes relating to such partnerships are inconsistent herewith.

History: En. Sec. 6, Ch. 251, L. 1947; R.C.M. 1947, 63-106.

Cross-References

Limited partnerships, Title 35, ch. 12.

35-10-202. Rules for determining the existence of a partnership. In determining whether a partnership exists, these rules shall apply:

(1) Except as provided by 35-10-308 persons who are not partners as to each other are not partners as to third persons.

(2) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not of itself establish a partnership, whether such co-owners do or do not share any profits made by the use of the property.

(3) The sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived.

(4) The receipt by a person of a share of the profits of a business is prima facie evidence that such person is a partner in the business, but no such inference shall be drawn if such profits were received in payment:

(a) as a debt by installments or otherwise;

(b) as wages of an employee or rent to a landlord;

(c) as an annuity to a surviving spouse or representative of a deceased partner;

(d) as interest on a loan, though the amount of payment varies with the profits of the business;

(e) as the consideration for the sale of a goodwill of a business or other property by installments or otherwise.

History: En. Sec. 7, Ch. 251, L. 1947; amd. Sec. 28, Ch. 535, L. 1975; R.C.M. 1947, 63-107.

Cross-References

Exception — sale of goodwill of business, 28-2-704.

Exception — dissolution of partnership, 28-2-705.

Loans of money — interest rates, Title 31, ch. 1, part 1.

Debtor defined, 31-2-101.

Payment of wages generally, 39-3-204.

Kinds of ownership interests, Title 70, ch. 1, part 3.

Rental agreement — terms and conditions, 70-24-201.

UPC — intestate succession and wills, Title 72, ch. 2.

35-10-203. Partnership property. (1) All property originally brought into the partnership stock or subsequently acquired by purchase or otherwise on account of the partnership is partnership property.

(2) Unless the contrary intention appears, property acquired with partnership funds is partnership property.

(3) Any estate in real property may be acquired in the partnership name. Title so acquired can be conveyed only in the partnership name.

(4) A conveyance to a partnership in the partnership name, though without words of inheritance, passes the entire estate of the grantor unless a contrary intent appears.

History: En. Sec. 8, Ch. 251, L. 1947; R.C.M. 1947, 63-108.

Cross-References

Property assessment, 15-8-402, 15-8-403.

Conveyance of partnership's real property, 35-10-302.

Property rights of a partner, Title 35, ch. 10, part 5.

Rights of partner after dissolution, 35-10-610.

Rights of partner when partnership contract rescinded, 35-10-611.

Part 3

Relation of Partner and Partnership to Other Persons

Part Cross-References

Relations between partners and with third persons in mining partnerships, Title 35, ch. 13, part 2.

35-10-301. Partner as agent of partnership — restrictions on partner's authority. (1) Every partner is an agent of the partnership for the purpose of its business, and the act of every partner, including the execution in the partnership name of any instrument, for apparently carrying on in the usual way the business of the partnership of which he is a member binds the partnership unless the partner so acting has in fact no authority to act for the partnership in the particular matter and the person with whom he is dealing has knowledge of the fact that he has no such authority.

(2) An act of a partner which is not apparently for the carrying on of the business of the partnership in the usual way does not bind the partnership unless authorized by the other partners.

(3) Unless authorized by the other partners or unless they have abandoned the business, one or more but less than all the partners have no authority to:

(a) assign the partnership property in trust for creditors or on the assignee's promise to pay the debts of the partnership;

(b) dispose of the goodwill of the business;

(c) do any other act which would make it impossible to carry on the ordinary business of a partnership;

(d) confess a judgment;

(e) submit a partnership claim or liability to arbitration or reference.

(4) No act of a partner in contravention of a restriction on authority shall bind the partnership to persons having knowledge of the restriction.

History: En. Sec. 9, Ch. 251, L. 1947; R.C.M. 1947, 63-201.

Cross-References

Partner's application to discharge attachment, 35-10-506.

Changes in partner's authority, 35-10-605, 35-10-606.

35-10-302. Conveyance of real property of the partnership. (1) Where title to real property is in the partnership name, any partner may convey title to such property by a conveyance executed in the partnership name, but the partnership may recover such property unless the partner's act binds the partnership under the provisions of 35-10-301(1) or unless such property has been conveyed by the grantee or a person claiming through such grantee to a holder for value without knowledge that the partner, in making the conveyance, has exceeded his authority.

(2) Where title to real property is in the name of the partnership, a conveyance executed by a partner in his own name passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of 35-10-301(1).

(3) Where title to real property is in the name of one or more but not all the partners and the record does not disclose the right of the partnership, the partners in whose name the title stands may convey title to such property, but the partnership may recover such property if the partner's act does not bind the partnership under the provisions of 35-10-301(1), unless the purchaser or his assignee is a holder for value without knowledge.

(4) Where the title to real property is in the name of one or more or all the partners or in a third person in trust for the partnership, a conveyance executed by a partner in the partnership name or in his own name passes the equitable interest of the partnership, provided the act is one within the authority of the partner under the provisions of 35-10-301(1).

(5) Where the title to real property is in the names of all the partners, a conveyance executed by all the partners passes all their rights in such property.

History: **En. Sec. 10, Ch. 251, L. 1947; R.C.M. 1947, 63-202.**

Cross-References

Fraudulent conveyance of partnership property, 31-2-317.

Partnership property, 35-10-203.

Property rights of a partner, Title 35, ch. 10, part 5.

Rights of partner after dissolution, 35-10-610.

Rights of partner when partnership contract rescinded, 35-10-611.

35-10-303. Partnership bound by admission of partner. An admission or representation made by any partner concerning partnership affairs within the scope of his authority as conferred by this chapter is evidence against the partnership.

History: **En. Sec. 11, Ch. 251, L. 1947; R.C.M. 1947, 63-203.**

Cross-References

Effect of admission, Rule 36(b), M.R.Civ.P. (see Title 25, ch. 20).

35-10-304. Partnership charged with knowledge of or notice to partner. Notice to any partner of any matter relating to partnership affairs and the knowledge of the partner acting in the particular matter, acquired while a partner or then present to his mind, and the knowledge of any other partner who reasonably could and should have communicated it to the acting partner operate as notice to or knowledge of the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

History: **En. Sec. 12, Ch. 251, L. 1947; R.C.M. 1947, 63-204.**

Cross-References
Knowledge of dissolution, 35-10-606.

35-10-305. Partnership liable for partner's wrongful act. Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership or with the authority of his copartners, loss or injury is caused to any person not being a partner in the partnership or any penalty is incurred, the partnership is liable therefor to the same extent as the partner so acting or omitting to act.

History: En. Sec. 13, Ch. 251, L. 1947; R.C.M. 1947, 63-205.

35-10-306. Partnership bound by partner's breach of trust. The partnership is bound to make good the loss:

(1) where one partner acting within the scope of his apparent authority receives money or property of a third person and misapplies it; and

(2) where the partnership in the course of its business receives money or property of a third person and the money or property so received is misapplied by any partner while it is in the custody of the partnership.

History: En. Sec. 14, Ch. 251, L. 1947; R.C.M. 1947, 63-206.

Cross-References
Grounds for dissolution, 35-10-604.
Power to bind partnership to third persons after dissolution, 35-10-607.

35-10-307. Nature of partner's liability. All partners are liable:

(1) jointly and severally for everything chargeable to the partnership under 35-10-305 and 35-10-306;

(2) jointly for all other debts and obligations of the partnership, but any partner may enter into a separate obligation to perform a partnership contract.

History: En. Sec. 15, Ch. 251, L. 1947; R.C.M. 1947, 63-207.

Cross-References
Multiple defendants jointly and severally liable — right of contribution, 27-1-703.
Liability of limited partner, 35-12-607, 35-12-703, 35-12-902, 35-12-1008.

35-10-308. Partner by estoppel. (1) When a person by words spoken or written or by conduct represents himself or consents to another representing him to anyone as a partner in an existing partnership or with one or more persons not actual partners, he is liable to any such person to whom such representation has been made who has on the faith of such representation, given credit to the actual or apparent partnership, and if he has made such representation or consented to its being made in a public manner, he is liable to such person, whether the representation has or has not been made or communicated to such person so giving credit by or with the knowledge of the apparent partner making the representation or consenting to its being made. When a partnership liability results, he is liable as though he were an actual member of the partnership. When no partnership liability results, he is liable jointly with the other persons, if any, so consenting to the contract or representation as to incur liability, otherwise separately.

(2) When a person has been thus represented to be a partner in an existing partnership or with one or more persons not actual partners, he is an agent of the persons consenting to such representation to bind them to the same extent and in the same manner as though he were a partner in fact,

with respect to persons who rely upon the representation. Where all the members of the existing partnership consent to the representation, a partnership act or obligation results, but in all other cases it is the joint act or obligation of the person acting and the persons consenting to the representation.

History: **En. Sec. 16, Ch. 251, L. 1947; R.C.M. 1947, 63-208.**

Cross-References

Agency, Title 28, ch. 10.

Rules for determining the existence of a partnership, 35-10-202.

Power of partner to bind partnership to third persons after dissolution, 35-10-607.

35-10-309. Liability of incoming partner. A person admitted as a partner into an existing partnership is liable for all the obligations of the partnership arising before his admission as though he had been a partner when such obligations were incurred, except that this liability shall be satisfied only out of partnership property.

History: **En. Sec. 17, Ch. 251, L. 1947; R.C.M. 1947, 63-209.**

Cross-References

Liability of persons continuing business after dissolution, 35-10-613.

Part 4

Relation of Partners to Partnership and to One Another

Part Cross-References

Relations between partners and with third persons in mining partnerships, Title 35, ch. 13, part 2.

35-10-401. Rules determining rights and duties of partners. The rights and duties of the partners in relation to the partnership shall be determined, subject to any agreement between them, by the following rules:

(1) Each partner shall be repaid his contributions whether by way of capital or advances to the partnership property and share equally in the profits and surplus remaining after all liabilities, including those to partners, are satisfied and must contribute towards the losses, whether of capital or otherwise, sustained by the partnership according to his share in the profits.

(2) The partnership must indemnify every partner in respect of payments made and personal liabilities reasonably incurred by him in the ordinary and proper conduct of its business or for the preservation of its business or property.

(3) A partner who in aid of the partnership makes any payment or advance beyond the amount of capital which he agreed to contribute shall be paid interest from the date of the payment or advance.

(4) A partner shall receive interest on the capital contributed by him only from the date when repayment should be made.

(5) All partners have equal rights in the management and conduct of the partnership business.

(6) No partner is entitled to remuneration for acting in the partnership business, except that a surviving partner is entitled to reasonable compensation for his services in winding up the partnership affairs.

(7) No person can become a member of a partnership without the consent of all the partners.

(8) Any difference arising as to ordinary matters connected with the partnership business may be decided by a majority of the partners, but no act in contravention of any agreement between the partners may be done rightfully without the consent of all the partners.

History: En. Sec. 18, Ch. 251, L. 1947; R.C.M. 1947, 63-301.

Cross-References

Property rights, Title 35, ch. 10, part 5.

Right of partner to contribution from copartners after dissolution, 35-10-606.

Right when partnership contract is rescinded for fraud or misrepresentation, 35-10-611.

Rules for distribution — payment priorities, 35-10-612.

Powers and duties of surviving partner, Title 72, ch. 12, part 7.

35-10-402. Partnership books — inspection rights. The partnership books shall be kept, subject to any agreement between the partners, at the principal place of business of the partnership, and every partner shall at all times have access to and may inspect and copy any of them.

History: En. Sec. 19, Ch. 251, L. 1947; R.C.M. 1947, 63-302.

Cross-References

Assignment of partner's interest, 35-10-504.

35-10-403. Duty of partners to render information. Partners shall render on demand true and full information of all things affecting the partnership to any partner or the legal representative of any deceased partner or partner under legal disability.

History: En. Sec. 20, Ch. 251, L. 1947; R.C.M. 1947, 63-303.

35-10-404. Right to an account. Any partner shall have the right to a formal account as to partnership affairs:

(1) if he is wrongfully excluded from the partnership business or possession of its property by his copartners;

(2) if the right exists under the terms of any agreement;

(3) as provided by 35-10-405;

(4) whenever other circumstances render it just and reasonable.

History: En. Sec. 22, Ch. 251, L. 1947; R.C.M. 1947, 63-305.

Cross-References

Assignment of partner's interest, 35-10-504.

Accrual of right to account, 35-10-615.

35-10-405. Partner accountable as a fiduciary for benefit derived without consent. (1) Every partner must account to the partnership for any benefit and hold as trustee for it any profits derived by him without the consent of the other partners from any transaction connected with the formation, conduct, or liquidation of the partnership or from any use by him of its property.

(2) This section applies also to the representatives of a deceased partner engaged in the liquidation of the affairs of the partnership as the personal representatives of the last surviving partner.

History: En. Sec. 21, Ch. 251, L. 1947; R.C.M. 1947, 63-304.

Cross-References

Miscellaneous provisions relating to fiduciaries, Title 72, ch. 31.

35-10-406. Rights and duties of partners when partnership continues beyond fixed term. (1) When a partnership for a fixed term or particular undertaking is continued after the termination of such term or particular undertaking without any express agreement, the rights and duties of the partners remain the same as they were at such termination, so far as is consistent with a partnership at will.

(2) A continuation of the business by the partners or such of them as habitually acted therein during the term without any settlement or liquidation of the partnership affairs is prima facie evidence of a continuation of the partnership.

History: En. Sec. 23, Ch. 251, L. 1947; R.C.M. 1947, 63-306.

Cross-References

Assignment of partner's interest, 35-10-504.

Dissolution and winding up, Title 35, ch. 10, part 6.

Part 5

Property Rights of a Partner

Part Cross-References

Partnership property, 35-10-203.

Conveyance of partnership's real property, 35-10-302.

Rights of partner after dissolution, 35-10-610.

Rights of partner when partnership contract rescinded, 35-10-611.

Status of creditors after dissolution, 35-10-613.

Limited partner's interest, 35-12-702, 35-12-705.

35-10-501. Classification of property rights of a partner. The property rights of a partner are:

(1) his rights in specific partnership property;

(2) his interest in the partnership; and

(3) his right to participate in the management.

History: En. Sec. 24, Ch. 251, L. 1947; R.C.M. 1947, 63-401.

35-10-502. Nature of a partner's rights in specific partnership property. (1) A partner is co-owner with the other partners of specific partnership property holding as a tenant in partnership.

(2) The incidents of this tenancy are such that:

(a) A partner, subject to the provisions of this chapter and to any agreement between the partners, has an equal right with the other partners to possess specific partnership property for partnership purposes but has no right to possess such property for any other purpose without the consent of the other partners.

(b) A partner's right in specific partnership property is not assignable except in connection with the assignment of rights of all the partners in the same property.

(c) A partner's right in specific partnership property is not subject to attachment or execution except on a claim against the partnership. When partnership property is attached for a partnership debt, the partners or any of them or the representatives of a deceased partner cannot claim any right under the homestead or exemption laws.

(d) On the death of a partner that partner's right in specific partnership property vests in the surviving partner or partners except where the deceased was the last surviving partner, in which case such deceased partner's right in such property vests in the deceased's legal representative. Such surviving partner or partners or the legal representative of the last surviving partner has no right to possess the partnership property for any but a partnership purpose.

(e) Provided the proceeds of a deceased partner's interest are included in the assets of the decedent's estate, such property is not subject to a lien of the surviving spouse for his or her elective share or a lien for or allowances to surviving spouses, heirs, or next of kin.

History: **En. Sec. 25, Ch. 251, L. 1947; amd. Sec. 29, Ch. 535, L. 1975; R.C.M. 1947, 63-402.**

35-10-503. Nature of partner's interest in the partnership. A partner's interest in the partnership is his share of the profits and surplus and the same is personal property.

History: **En. Sec. 26, Ch. 251, L. 1947; R.C.M. 1947, 63-403.**

Cross-References

Nature of partner's interest in limited partnership, 35-12-1101.

35-10-504. Assignment of partner's interest. (1) A conveyance by a partner of his interest in the partnership does not of itself dissolve the partnership or as against the other partners in the absence of agreement entitle the assignee during the continuance of the partnership to interfere in the management or administration of the partnership business or affairs or to require any information or account of partnership transactions or to inspect the partnership books. It merely entitles the assignee to receive in accordance with his contract the profits to which the assigning partner would otherwise be entitled.

(2) In case of a dissolution of the partnership, the assignee is entitled to receive his assignor's interest and may require an account from the date only of the last account agreed to by all the partners.

History: **En. Sec. 27, Ch. 251, L. 1947; R.C.M. 1947, 63-404.**

Cross-References

Dissolution by decree of court, 35-10-604.

35-10-505. Partner's interest subject to charging order. (1) On due application to a competent court by any judgment creditor of a partner, the court which entered the judgment, order, or decree or any other court may charge the interest of the debtor partner with payment of the unsatisfied amount of such judgment debt with interest thereon and may then or later appoint a receiver of his share of the profits and of any other money due or to fall due to him in respect of the partnership and make all other orders, directions, accounts, and inquiries which the debtor partner might have made or which the circumstances of the case may require.

(2) The interest charged may be redeemed at any time before foreclosure or, in case of a sale being directed by the court, may be purchased without thereby causing a dissolution:

(a) with separate property, by any one or more of the partners; or

(b) with partnership property, by any one or more of the partners with the consent of all the partners whose interests are not so charged or sold.

(3) Nothing in this chapter shall be held to deprive a partner of his right, if any, under the exemption laws as regards his interest in the partnership.

History: En. Sec. 28, Ch. 251, L. 1947; R.C.M. 1947, 63-405.

Cross-References

Dissolution by decree of court, 35-10-604.

35-10-506. Partner's application to discharge attachment — undertaking. (1) If a writ of attachment is levied upon the interest in a partnership of one or more of the partners, the other partners who are not defendants in the action or any of them may, at any time before final judgment, apply to the judge who granted the writ or to the court, upon an affidavit showing the facts, for an order to discharge the attachment as to that interest.

(2) Upon such an application, the applicant shall give an undertaking, with at least two sufficient sureties, to the effect that they will pay to the sheriff, on demand, the amount of any judgment which may be recovered against the partner who is defendant in the action or which may be recovered against him in any other action in which the other partners are not defendants and in which a writ of attachment or an execution may come into the sheriff's hands at any time before the writ of attachment which was so levied is vacated and annulled, not exceeding the sum specified in the undertaking, which may not be less than the value of the interest of the defendant in the partnership as fixed by the court or judge. If, in the opinion of the court or judge, the value is uncertain, the sum must be such as the court or judge determines. For the purpose of fixing the sum or to determine the sufficiency of its sureties, the court or judge may receive affidavits or oral testimony or may direct a reference.

History: En. Secs. 921, 922, C. Civ. Proc. 1895; re-en. Secs. 6688, 6689, Rev. C. 1907; re-en. Secs. 9289, 9290, R.C.M. 1921; re-en. Secs. 9289, 9290, R.C.M. 1935; R.C.M. 1947, 93-4336, 93-4337; amd. Sec. 10, Ch. 202, L. 1979.

Cross-References

Prejudgment attachment, Title 27, ch. 18.

Restrictions on partner's authority, 35-10-301.

35-10-507. Repealed. Sec. 12, Ch. 202, L. 1979.

History: En. Sec. 1219, C. Civ. Proc. 1895; re-en. Sec. 6822, Rev. C. 1907; re-en. Sec. 9425, R.C.M. 1921; re-en. Sec. 9425, R.C.M. 1935; amd. Sec. 11-165, Ch. 264, L. 1963; R.C.M. 1947, 93-5811.

Part 6

Dissolution and Winding Up

Part Cross-References

Dissolution and liquidation of business corporations, Title 35, ch. 1, part 9.

Dissolution and liquidation of nonprofit corporations, Title 35, ch. 2, part 7.

Involuntary corporate dissolution, Title 35, ch. 6.

Dissolution of limited partnerships, Title 35, ch. 12, part 12.

Sale or disposition of assets of cooperative associations, 35-15-506.

Sale or disposition of assets of cooperative agricultural marketing associations, 35-17-506.

Dissolution of rural cooperative utilities, 35-18-404, 35-18-405.

35-10-601. Dissolution defined. The dissolution of a partnership is the change in the relation of the partners caused by any partner ceasing to be associated in the carrying on as distinguished from the winding up of the business.

History: **En. Sec. 29, Ch. 251, L. 1947; R.C.M. 1947, 63-501.**

Cross-References

Appointment of receiver, 27-20-102.

35-10-602. Partnership not terminated by dissolution. On dissolution the partnership is not terminated but continues until the winding up of partnership affairs is completed.

History: **En. Sec. 30, Ch. 251, L. 1947; R.C.M. 1947, 63-502.**

35-10-603. Causes of dissolution. (1) Dissolution is caused, without violation of the agreement between the partners by:

(a) the termination of the definite term or particular undertaking specified in the agreement;

(b) the express will of any partner when no definite term or particular undertaking is specified;

(c) the express will of all the partners who have not assigned their interests or suffered them to be charged for their separate debts, either before or after the termination of any specified term or particular undertaking;

(d) the expulsion of any partner from the business bona fide in accordance with such a power conferred by the agreement between the partners.

(2) Dissolution is caused, in contravention of the agreement between the partners, where the circumstances do not permit a dissolution under any other provision of this section, by the express will of any partner at any time.

(3) Dissolution is caused by any event which makes it unlawful for the business of the partnership to be carried on or for the members to carry it on in partnership.

(4) Dissolution is caused by the death of any partner.

(5) Dissolution is caused by the bankruptcy of any partner or the partnership.

(6) Dissolution is caused by decree of court under 35-10-604.

History: **En. Sec. 31, Ch. 251, L. 1947; R.C.M. 1947, 63-503.**

Cross-References

Powers and duties of surviving partner, Title 72, ch. 12, part 7.

35-10-604. Dissolution by decree of court. (1) On application by or for a partner, the court shall decree a dissolution whenever:

(a) a partner is declared seriously mentally ill in a judicial proceeding or is shown to be mentally incompetent;

(b) a partner becomes in any other way incapable of performing his part of the partnership contract;

(c) a partner has been guilty of such conduct as tends to affect prejudicially the carrying on of the business;

(d) a partner willfully or persistently commits a breach of the partnership agreement or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable to carry on the business in partnership with him;

(e) the business of the partnership can only be carried on at a loss; or

(f) other circumstances render a dissolution equitable.

(2) On the application of the purchaser of a partner's interest under 35-10-504 or 35-10-505, the court shall decree a dissolution:

(a) after the termination of the specified term or particular undertaking;

(b) at any time if the partnership was a partnership at will when the interest was assigned or when the order charging such interest was issued.

History: **En. Sec. 32, Ch. 251, L. 1947; amd. Sec. 14, Ch. 62, L. 1977; R.C.M. 1947, 63-504.**

Cross-References

Partnership bound by partner's breach of trust, 35-10-306.

35-10-605. General effect of dissolution on authority of partner. Except so far as may be necessary to wind up partnership affairs or to complete transactions begun but not then finished, dissolution terminates all authority of any partner to act for the partnership:

(1) with respect to the partners:

(a) when the dissolution is not by the act, bankruptcy, or death of a partner; or

(b) when the dissolution is by such act, bankruptcy, or death of a partner in cases where 35-10-606 so requires;

(2) with respect to persons not partners, as declared in 35-10-607.

History: **En. Sec. 33, Ch. 251, L. 1947; R.C.M. 1947, 63-505.**

35-10-606. Right of partner to contribution from copartners after dissolution. Where the dissolution is caused by the act, death, or bankruptcy of a partner, each partner is liable to his copartners for his share of any liability created by any partner acting for the partnership as if the partnership had not been dissolved unless:

(1) the dissolution being by act of any partner, the partner acting for the partnership had knowledge of the dissolution; or

(2) the dissolution being by the death or bankruptcy of a partner, the partner acting for the partnership had knowledge or notice of the death or bankruptcy.

History: **En. Sec. 34, Ch. 251, L. 1947; R.C.M. 1947, 63-506.**

35-10-607. Power of partner to bind partnership to third persons after dissolution. (1) After dissolution a partner can bind the partnership, except as provided in subsection (3):

(a) by any act appropriate for winding up partnership affairs or completing transactions unfinished at dissolution;

(b) by any transaction which would bind the partnership if dissolution had not taken place, provided the other party to the transaction:

(i) had extended credit to the partnership prior to dissolution and had no knowledge or notice of the dissolution; or

(ii) though he had not so extended credit, had nevertheless known of the partnership prior to dissolution and, having no knowledge or notice of dissolution, the fact of dissolution had not been advertised in a newspaper of general circulation in the place (or in each place if more than one) at which the partnership business was regularly carried on.

(2) The liability of a partner under subsection (1)(b) shall be satisfied out of partnership assets alone when such partner had been prior to dissolution:

(a) unknown as a partner to the person with whom the contract is made; and

(b) so far unknown and inactive in partnership affairs that the business reputation of the partnership could not be said to have been in any degree due to his connection with it.

(3) The partnership is in no case bound by any act of a partner after dissolution:

(a) where the partnership is dissolved because it is unlawful to carry on the business, unless the act is appropriate for winding up partnership affairs;

(b) where the partner has become bankrupt; or

(c) where the partner has no authority to wind up partnership affairs, except by a transaction with one who:

(i) had extended credit to the partnership prior to dissolution and had no knowledge or notice of his want of authority; or

(ii) had not extended credit to the partnership prior to dissolution and having no knowledge or notice of his want of authority, the fact of his want of authority has not been advertised in the manner provided for advertising the fact of dissolution in subsection (1)(b)(ii).

(4) Nothing in this section shall affect the liability under 35-10-308 of any person who after dissolution represents himself or consents to another representing him as a partner in a partnership engaged in carrying on business.

History: **En. Sec. 35, Ch. 251, L. 1947; R.C.M. 1947, 63-507.**

Cross-References

Partnership by estoppel, 35-10-308.

35-10-608. Effect of dissolution on partner's existing liability. (1) The dissolution of the partnership does not of itself discharge the existing liability of any partner.

(2) A partner is discharged from any existing liability upon dissolution of the partnership by an agreement to that effect between himself, the partnership creditor, and the person or partnership continuing the business; and such agreement may be inferred from the course of dealing between the creditor having knowledge of the dissolution and the person or partnership continuing the business.

(3) Where a person agrees to assume the existing obligations of a dissolved partnership, the partners whose obligations have been assumed shall be discharged from any liability to any creditor of the partnership who, knowing of the agreement, consents to a material alteration in the nature or time of payment of such obligations.

(4) The individual property of a deceased partner shall be liable for all obligations of the partnership incurred while he was a partner but subject to the prior payment of his separate debts.

History: **En. Sec. 36, Ch. 251, L. 1947; R.C.M. 1947, 63-508.**

Cross-References

Rights and duties of partners — indemnification, 35-10-401.

35-10-609. Right to wind up. Unless otherwise agreed, the partners who have not wrongfully dissolved the partnership or the legal representative of the last surviving partner, not bankrupt, has the right to wind up the partnership affairs. However, any partner, his legal representative, or his assignee, upon cause shown, may obtain winding up by the court.

History: **En. Sec. 37, Ch. 251, L. 1947; R.C.M. 1947, 63-509.**

35-10-610. Rights of partners after dissolution to application of partnership property or to continue business. (1) When dissolution is caused in any way, except in contravention of the partnership agreement, each partner as against his copartners and all persons claiming through them in respect of their interests in the partnership, unless otherwise agreed, may have the partnership property applied to discharge its liabilities and the surplus applied to pay in cash the net amount owing to the respective partners. But if dissolution is caused by expulsion of a partner bona fide under the partnership agreement and if the expelled partner is discharged from all partnership liabilities either by payment or agreement under 35-10-608(2), he shall receive in cash only the net amount due him from the partnership.

(2) When dissolution is caused in contravention of the partnership agreement, the rights of the partners shall be as follows:

(a) Each partner who has not caused dissolution wrongfully shall have:

(i) all the rights specified in subsection (1) of this section; and

(ii) the right, as against each partner who has caused the dissolution wrongfully, to damages for breach of the agreement.

(b) The partners who have not caused the dissolution wrongfully, if they all desire to continue the business in the same name either by themselves or jointly with others, may do so during the agreed term for the partnership and for that purpose may possess the partnership property, provided they secure the payment by bond approved by the court or pay to any partner who has caused the dissolution wrongfully the value of his interest in the partnership at the dissolution, less any damages recoverable under (2)(a)(ii) of this section, and in like manner indemnify him against all present or future partnership liabilities.

(c) A partner who has caused the dissolution wrongfully shall have:

(i) if the business is not continued under the provisions of (2)(b), all the rights of a partner under (1), subject to (2)(a)(ii) of this section;

(ii) if the business is continued under (2)(b) of this section, the right as against his copartners and all claiming through them in respect of their interests in the partnership to have the value of his interest in the partnership, less any damages caused to his copartners by the dissolution, ascertained and paid him in cash or the payment secured by bond approved by the court and to be released from all existing liabilities of the partnership, but in ascertaining the value of the partner's interest, the value of the goodwill of the business shall not be considered.

History: **En. Sec. 38, Ch. 251, L. 1947; R.C.M. 1947, 63-510.**

Cross-References

Partnership property, 35-10-203.

Conveyance of partnership's real property, 35-10-302.

Rights and duties of partners — indemnification, 35-10-401.

Property rights of a partner, Title 35, ch. 10, part 5.

35-10-611. Rights when partnership contract is rescinded for fraud or misrepresentation. Where a partnership contract is rescinded on the ground of the fraud or misrepresentation of one of the parties thereto, the party entitled to rescind is, without prejudice to any other right, entitled to:

(1) a lien on or right of retention of the surplus of the partnership property, after satisfying the partnership liabilities to third persons, for any sum of money paid by him for the purchase of an interest in the partnership and for any capital or advances contributed by him; and

(2) stand, after all liabilities to third persons have been satisfied, in the place of the creditors of the partnership for any payments made by him in respect to the partnership liabilities; and

(3) be indemnified by the person guilty of the fraud or making the representation against all debts and liabilities of the partnership.

History: En. Sec. 39, Ch. 251, L. 1947; R.C.M. 1947, 63-511.

Cross-References

Fraud, 28-2-404 through 28-2-406.

Indemnity, Title 28, ch. 11, part 3.

Partnership property, 35-10-203.

Conveyance of partnership's real property, 35-10-302.

Property rights of a partner, Title 35, ch. 10, part 5.

Liens generally, Title 71, ch. 3, part 1.

35-10-612. Rules for distribution — payment priorities. In settling accounts between the partners after dissolution, the following rules shall be observed, subject to any agreement to the contrary:

(1) The assets of the partnership are:

(a) the partnership property;

(b) the contributions of the partners necessary for the payment of all the liabilities specified in subsection (2) of this section.

(2) The liabilities of the partnership shall rank in order of payment, as follows:

(a) those owing to creditors other than partners;

(b) those owing to partners other than for capital and profits;

(c) those owing to partners in respect of capital;

(d) those owing to partners in respect of profits.

(3) The assets shall be applied in the order of their declaration in subsection (1) of this section to the satisfaction of the liabilities.

(4) The partners shall contribute, as provided by 35-10-401(1), the amount necessary to satisfy the liabilities; but if any but not all of the partners are insolvent or, not being subject to process, refuse to contribute, the other partners shall contribute their share of the liabilities and, in the relative proportions in which they share the profits, the additional amount necessary to pay the liabilities.

(5) An assignee for the benefit of creditors or any person appointed by the court shall have the right to enforce the contributions specified in subsection (4) of this section.

(6) Any partner or his legal representative shall have the right to enforce the contributions specified in subsection (4) of this section, to the extent of the amount which he has paid in excess of his share of the liability.

(7) The individual property of a deceased partner shall be liable for the contributions specified in subsection (4) of this section.

(8) When partnership property and the individual properties of the partners are in possession of a court for distribution, partnership creditors shall have priority on partnership property and separate creditors on individual property, saving the rights of lien or secured creditors.

(9) Where a partner has become bankrupt or his estate is insolvent, the claims against his separate property shall rank in the following order:

(a) those owing to separate creditors;

(b) those owing to partnership creditors;

(c) those owing to partners by way of contribution.

History: **En. Sec. 40, Ch. 251, L. 1947; R.C.M. 1947, 63-512.**

Cross-References

Assignments for benefit of creditors, Title 31, ch. 2, part 2.

35-10-613. Status of creditors when business continued after dissolution without liquidation — liability of persons continuing business. (1) When any new partner is admitted into an existing partnership or when any partner retires and assigns (or the representative of the deceased partner assigns) his rights in partnership property to two or more of the partners or to one or more of the partners and one or more third persons, if the business is continued without liquidation of the partnership affairs, creditors of the first or dissolved partnership are also creditors of the partnership so continuing the business.

(2) When all but one partner retire and assign (or the representative of a deceased partner assigns) their rights in partnership property to the remaining partner who continues the business without liquidation of partnership affairs either alone or with others, creditors of the dissolved partnership are also creditors of the person or partnership so continuing the business.

(3) When any partner retires or dies and the business of the dissolved partnership is continued as set forth in subsections (1) and (2) of this section with the consent of the retired partners or the representative of the deceased partner but without any assignment of his right in partnership property, rights of creditors of the dissolved partnership and of the creditors of the person or partnership continuing the business shall be as if such assignment had been made.

(4) When all the partners or their representatives assign their rights in partnership property to one or more third persons who promise to pay the debts and who continue the business of the dissolved partnership, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(5) When any partner wrongfully causes a dissolution and the remaining partners continue the business under the provisions of 35-10-610(2)(b) either alone or with others and without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(6) When a partner is expelled and the remaining partners continue the business either alone or with others without liquidation of the partnership affairs, creditors of the dissolved partnership are also creditors of the person or partnership continuing the business.

(7) The liability of a third person becoming a partner in the partnership continuing the business, under this section, to the creditors of the dissolved partnership shall be satisfied out of partnership property only.

(8) When the business of a partnership after dissolution is continued under any conditions set forth in this section the creditors of the dissolved

partnership, as against the separate creditors of the retiring or deceased partner or the representative of the deceased partner, have a prior right to any claim of the retired partner or the representative of the deceased partner against the person or partnership continuing the business on account of the retired or deceased partner's interest in the dissolved partnership or on account of any consideration promised for such interest or for his right in partnership property.

(9) Nothing in this section shall be held to modify any right of creditors to set aside any assignment on the ground of fraud.

(10) The use, by the person or partnership continuing the business, of the partnership name or the name of a deceased partner as part thereof shall not of itself make the individual property of the deceased partner liable for any debts contracted by such person or partnership.

History: En. Sec. 41, Ch. 251, L. 1947; R.C.M. 1947, 63-513.

35-10-614. Rights of retiring or estate of deceased partner when the business is continued. When any partner retires or dies and the business is continued under any of the conditions set forth in subsections (1), (2), (3), (5), or (6) of 35-10-613, or 35-10-610(2)(b) without any settlement of accounts as between him or his estate and the person or partnership continuing the business, unless otherwise agreed, he or his legal representative as against such persons or partnership may have the value of his interest at the date of dissolution ascertained and shall receive as an ordinary creditor an amount equal to the value of his interest in the dissolved partnership with interest or at his option or at the option of his legal representative, in lieu of interest, the profits attributable to the use of his right in the property of the dissolved partnership; provided that the creditors of the dissolved partnership, as against the separate creditors or the representative of the retired or deceased partner, shall have priority on any claim arising under this section, as provided by 35-10-613(8).

History: En. Sec. 42, Ch. 251, L. 1947; R.C.M. 1947, 63-514.

Cross-References

Death of limited partner — rights of estate, 35-12-1105.

Probate — powers and duties of surviving partner, Title 72, ch. 12, part 7.

35-10-615. Accrual of right to account. The right to an account of his interest shall accrue to any partner or his legal representative, as against the winding up partners or the surviving partners or the person or partnership continuing the business, at the date of dissolution, in the absence of any agreement to the contrary.

History: En. Sec. 43, Ch. 251, L. 1947; R.C.M. 1947, 63-515.

CHAPTER 11

PARTNERSHIP — USE OF FICTITIOUS NAME

Part 1 — Provisions Relating to Partnerships
(Repealed. Sec. 18, Ch. 260, L. 1979)

Part 2 — Provisions Relating to County Clerk

35-11-201. Register of names to be kept by county clerk.

35-11-202. Certified copies of register and proof of publication to be evidence.

Chapter Cross-References

Assumed business names, Title 30, ch. 13, part 2.

Part 1

Provisions Relating to Partnerships (Repealed. Sec. 18, Ch. 260, L. 1979)

Part Compiler's Comments

Histories of Repealed Sections:

35-11-101. En. Sec. 3280, Civ. C. 1895; re-en. Sec. 5504, Rev. C. 1907; re-en. Sec. 8019, R.C.M. 1921; Cal. Civ. C. Sec. 2466; re-en. Sec. 8019, R.C.M 1935; amd. Sec. 2, Ch. 111, L. 1969; R.C.M. 1947, 63-601.

35-11-102. En. Sec. 3281, Civ. C. 1895; re-en. Sec. 5505, Rev. C. 1907; re-en. Sec. 8020, R.C.M. 1921; Cal. Civ. C. Sec. 2468; re-en. Sec. 8020, R.C.M 1935; R.C.M. 1947, 63-602(part).

35-11-103. En. Sec. 3282, Civ. C. 1895; re-en. Sec. 5506, Rev. C. 1907; re-en. Sec. 8021, R.C.M. 1921; Cal. Civ. C. Sec. 2469; re-en. Sec. 8021, R.C.M 1935; amd. Sec. 3, Ch. 111, L. 1969; R.C.M. 1947, 63-603.

Part 2

Provisions Relating to County Clerk

35-11-201. Register of names to be kept by county clerk. Every county clerk must keep a register of the names of firms and persons mentioned in the certificates filed with him, pursuant to 35-11-101 through 35-11-103 prior to repeal by section 18, Chapter 260, Laws of 1979, entering in alphabetical order the name of every such partnership and of each partner therein.

History: En. Sec. 3283, Civ. C. 1895; re-en. Sec. 5507, Rev. C. 1907; re-en. Sec. 8022, R.C.M. 1921; Cal. Civ. C. Sec. 2470; Field Civ. C. Sec. 1326; re-en. Sec. 8022, R.C.M. 1935; R.C.M. 1947, 63-604; amd. Sec. 155, Ch. 575, L. 1981.

35-11-202. Certified copies of register and proof of publication to be evidence. Copies of the entries of a county clerk, when certified by him and affidavits of publication pursuant to 35-11-101 through 35-11-103 prior to repeal by section 18, Chapter 260, Laws of 1979, made by the printer, publisher, or chief clerk of a newspaper are presumptive evidence of the facts therein stated.

History: En. Sec. 3284, Civ. C. 1895; re-en. Sec. 5508, Rev. C. 1907; re-en. Sec. 8023, R.C.M. 1921; Cal. Civ. C. Sec. 2471; Field Civ. C. Sec. 1327; re-en. Sec. 8023, R.C.M. 1935; R.C.M. 1947, 63-605; amd. Sec. 156, Ch. 575, L. 1981.

CHAPTER 12

LIMITED PARTNERSHIPS

Part 1 — General
(Repealed. Sec. 64, Ch, 522, L. 1981)

Part 2 — Formation—Certificate
(Repealed. Sec. 64, Ch. 522, L. 1981)

Part 3 — Powers, Duties, and Liabilities of Partners
(Repealed. Sec. 64, Ch. 522, L. 1981)

Part 4 — Dissolution
(Repealed. Sec. 64, Ch. 522, L. 1981)

Part 5 — General Provisions

35-12-501. Short title.
35-12-502. Construction and application.
35-12-503. Rules for cases not provided for in this chapter.
35-12-504. Definitions.
35-12-505. Name.
35-12-506. Reservation of name.
35-12-507. Specified office and agent.
35-12-508. Records to be kept.
35-12-509. Nature of business.
35-12-510. Business transactions of partner with the partnership.
35-12-511 through 35-12-520 reserved.
35-12-521. Secretary of state to establish fees.

Part 6 — Formation—Certificate of Limited Partnership

35-12-601. Certificate of limited partnership.
35-12-602. Amendments to certificate.
35-12-603. Cancellation of certificate.
35-12-604. Execution of certificates.
35-12-605. Amendment or cancellation by judicial act.
35-12-606. Filing in the office of the secretary of state.
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Part 7 — Limited Partners

35-12-701. Admission of additional limited partners.
35-12-702. Voting.
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35-12-705. Right to information.

Part 8 — General Partners

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35-12-803. General powers and liabilities.

35-12-804. Contributions by a general partner.
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35-12-901. Form of contributions.
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35-12-1002. Withdrawal of general partner.
35-12-1003. Withdrawal of limited partner.
35-12-1004. Distributions upon withdrawal.
35-12-1005. Distributions in kind.
35-12-1006. Right to distributions.
35-12-1007. Limitations on distributions.
35-12-1008. Liability upon return of contributions.

Part 11 — Assignment of Partnership Interests

35-12-1101. Nature of partnership interest.
35-12-1102. Assignment of partnership interest.
35-12-1103. Rights of creditors.
35-12-1104. Right of assignee to become limited partner.
35-12-1105. Power of estate of deceased or incompetent partner.

Part 12 — Dissolution

35-12-1201. Nonjudicial dissolution.
35-12-1202. Dissolution by decree of court.
35-12-1203. Winding up.
35-12-1204. Distribution of assets.

Part 13 — Foreign Limited Partnerships

35-12-1301. Law governing.
35-12-1302. Registration.
35-12-1303. Issuance of registration.
35-12-1304. Name.
35-12-1305. Changes and amendments.
35-12-1306. Cancellation of registration.
35-12-1307. Transaction of business without registration.
35-12-1308. Action by attorney general.

Part 14 — Derivative Actions

35-12-1401. Right of action.
35-12-1402. Proper plaintiff.
35-12-1403. Pleading.
35-12-1404. Expenses.

Chapter Cross-References

Applicability of partnership law, 35-10-201.

Part 1

General
(Repealed. Sec. 64, Ch. 522, L. 1981)

Part Compiler's Comments

Histories of Repealed Sections:

35-12-101. En. Sec. 27, Ch. 252, L. 1947; R.C.M. 1947, 63-908.

35-12-102. En. Sec. 1, Ch. 252, L. 1947; R.C.M. 1947, 63-701.

35-12-103. En. Sec. 3, Ch. 252, L. 1947; R.C.M. 1947, 63-703.

35-12-104. En. Sec. 30, Ch. 252, L. 1947; R.C.M. 1947, 63-911.

35-12-105. En. Sec. 28, Ch. 252, L. 1947; R.C.M. 1947, 63-909.

35-12-106. En. Sec. 29, Ch. 252, L. 1947; R.C.M. 1947, 63-910.

Part 2

Formation — Certificate
(Repealed. Sec. 64, Ch. 522, L. 1981)

Part Compiler's Comments

Histories of Repealed Sections:

35-12-201. En. Sec. 2, Ch. 252, L. 1947; amd. Sec. 1, Ch. 111, L. 1969; amd. Sec. 15, Ch. 62, L. 1977; R.C.M. 1947, 63-702.

35-12-202. En. Sec. 6, Ch. 252, L. 1947; R.C.M. 1947, 63-706.

35-12-203. En. Sec. 24, Ch. 252, L. 1947; amd. Sec. 18, Ch. 62, L. 1977; R.C.M. 1947, 63-905.

35-12-204. En. Sec. 25, Ch. 252, L. 1947; amd. Sec. 4, Ch. 111, L. 1969; R.C.M. 1947, 63-906.

35-12-205. En. Sec. 5, Ch. 252, L. 1947; R.C.M. 1947, 63-705.

35-12-206. En. Sec. 4, Ch. 252, L. 1947; R.C.M. 1947, 63-704.

35-12-207. En. Sec. 8, Ch. 252, L. 1947; R.C.M. 1947, 63-802.

Part 3

Powers, Duties, and Liabilities of Partners
(Repealed. Sec. 64, Ch. 522, L. 1981)

Part Compiler's Comments

Histories of Repealed Sections:

35-12-301. En. Sec. 7, Ch. 252, L. 1947; R.C.M. 1947, 63-801.

35-12-302. En. Sec. 26, Ch. 252, L. 1947; R.C.M. 1947, 63-907.

35-12-303. En. Sec. 18, Ch. 252, L. 1947; R.C.M. 1947, 63-812.

35-12-304. En. Sec. 19, Ch. 252, L. 1947; R.C.M. 1947, 63-813.

35-12-305. En. Sec. 22, Ch. 252, L. 1947; R.C.M. 1947, 63-903.

35-12-306. En. Sec. 9, Ch. 252, L. 1947; amd. Sec. 16, Ch. 62, L. 1977; R.C.M. 1947, 63-803.

35-12-307. En. Sec. 10, Ch. 252, L. 1947; R.C.M. 1947, 63-804.

35-12-308. En. Sec. 15, Ch. 252, L. 1947; R.C.M. 1947, 63-809.

35-12-309. En. Sec. 17, Ch. 252, L. 1947; R.C.M. 1947, 63-811.

35-12-310. En. Sec. 13, Ch. 252, L. 1947; R.C.M. 1947, 63-807.

35-12-311. En. Sec. 14, Ch. 252, L. 1947; R.C.M. 1947, 63-808.

35-12-312. En. Sec. 11, Ch. 252, L. 1947; R.C.M. 1947, 63-805.

35-12-313. En. Sec. 12, Ch. 252, L. 1947; R.C.M. 1947, 63-806.

35-12-314. En. Sec. 16, Ch. 252, L. 1947; R.C.M. 1947, 63-810(1) thru (3).

Part 4

Dissolution
(Repealed. Sec. 64, Ch. 522, L. 1981)

Part Compiler's Comments

Histories of Repealed Sections:

35-12-401. (1)En. Sec. 20, Ch. 252, L. 1947; amd. Sec. 17, Ch. 62, L. 1977; Sec. 63-901, R.C.M. 1947; (2)En. Sec. 16, Ch. 252, L. 1947;

Sec. 63-810, R.C.M. 1947; R.C.M. 1947, 63-810(4), 63-901.

35-12-402. En. Sec. 21, Ch. 252, L. 1947; R.C.M. 1947, 63-902.

35-12-403. En. Sec. 23, Ch. 252, L. 1947; R.C.M. 1947, 63-904.

Part 5

General Provisions

Part Cross-References

Foreign limited partnerships, Title 35, ch. 12, part 13.

35-12-501. Short title. This chapter may be cited as the "Uniform Limited Partnership Act".

History: **En. Sec. 1, Ch. 522, L. 1981.**

35-12-502. Construction and application. This chapter must be so construed and applied to effect its general purpose to make uniform the law with respect to limited partnerships among states enacting it.

History: **En. Sec. 2, Ch. 522, L. 1981.**

35-12-503. Rules for cases not provided for in this chapter. In any case not provided for in this chapter, the provisions of the Uniform Partnership Act (Title 35, chapter 10) govern.

History: **En. Sec. 3, Ch. 522, L. 1981.**

35-12-504. Definitions. In this chapter, the following definitions apply:

(1) "Certificate of limited partnership" means the certificate referred to in 35-12-601, as that certificate is amended from time to time.

(2) "Contribution" means any cash, property, or services rendered or a promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in his capacity as a partner.

(3) "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in 35-12-802.

(4) "Foreign limited partnership" means a partnership formed under the laws of any state other than this state and having as partners one or more general partners and one or more limited partners.

(5) "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and who is named in the certificate of limited partnership as a general partner.

(6) "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement and who is named in the certificate of limited partnership as a limited partner.

(7) "Limited partnership" and "domestic limited partnership" mean a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners.

(8) "Partner" means any limited partner or general partner.

(9) "Partnership agreement" means the agreement, written or, to the extent not prohibited by law, oral, or both, of the partners as to the affairs of a limited partnership and the conduct of its business.

(10) "Partnership interest" has the meaning specified in 35-12-1101.

(11) "Person" means a natural person, partnership, limited partnership (domestic or foreign), trust, estate, association, or corporation.

(12) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

History: **En. Sec. 4, Ch. 522, L. 1981.**

35-12-505. Name. The name of each limited partnership as set forth in its certificate of limited partnership:

(1) shall contain the words "limited partnership" in full;

(2) may not contain the name of a limited partner unless:

(a) it is also the name of a general partner; or

(b) the business of the limited partnership had been carried on under that name before the admission of that limited partner;

(3) may not contain any word or phrase indicating or implying that it is organized other than for a purpose stated in its certificate of limited partnership; and

(4) may not be the same as or deceptively similar to the name of any corporation or limited partnership organized under the laws of this state or licensed or registered as a foreign corporation or limited partnership in this state.

History: **En. Sec. 5, Ch. 522, L. 1981.**

Cross-References

Assumed business names, Title 30, ch. 13, part 2.

Exclusivity of corporate name, 30-13-202.

Business corporation, corporate name, Title 35, ch. 1, part 3.

Foreign corporation, corporate name, 35-1-1006.

Nonprofit corporation, corporate name, 35-2-301.

Foreign nonprofit corporation, corporate name, 35-2-805, 35-2-806.

Business trust name, 35-5-201.

Acquisition of new name by dissolved corporation upon reinstatement, 35-2-1203, 35-6-203.

Limited partner not liable as a general partner, 35-12-703.

Rural cooperative utility names, 35-18-201.

35-12-506. Reservation of name. (1) The exclusive right to the use of a name may be reserved by:

(a) any person intending to organize a limited partnership under this chapter and to adopt that name;

(b) any domestic limited partnership or any foreign limited partnership registered in this state which, in either case, intends to adopt that name;

(c) any foreign limited partnership intending to register in this state and to adopt that name; and

(d) any person intending to organize a foreign limited partnership and intending to have it registered in this state and to adopt that name.

(2) The reservation must be made by filing with the secretary of state an application, executed by the applicant, to reserve a specified name. If the secretary of state finds that the name is available for use by a domestic or foreign limited partnership, he shall reserve the name for the exclusive use of the applicant for a period of 120 days. Once having reserved a name, the applicant may not again reserve the name until more than 60 days after the

expiration of the last 120-day period for which that applicant had reserved that name. The right to the exclusive use of a name so reserved may be transferred to any other person by filing in the office of the secretary of state a notice of the transfer, executed by the applicant for whom the name was reserved and specifying the name and address of the transferee.

History: **En. Sec. 6, Ch. 522, L. 1981.**

Cross-References

Reservation of proposed assumed business name, 30-13-211.

Reservation of name by business corporation, 35-1-302.

Reservation of name by nonprofit corporation, 35-2-301.

35-12-507. Specified office and agent. Each limited partnership shall continuously maintain in this state:

(1) an office, which may but need not be a place of its business in this state, at which must be kept the records required to be maintained by 35-12-508; and

(2) an agent for service of process on the limited partnership, which agent must be an individual resident of this state, a domestic corporation, or a foreign corporation authorized to do business in this state.

History: **En. Sec. 7, Ch. 522, L. 1981.**

Cross-References

Agency, Title 28, ch. 10.

Registered office and agent of business corporation, 35-1-305.

Registered office and agent of nonprofit corporation, 35-2-302.

35-12-508. Records to be kept. (1) Each limited partnership shall keep at the office referred to in 35-12-507(1) the following:

(a) a current list of the full name and last-known business address of each partner, set forth in alphabetical order;

(b) a copy of the certificate of limited partnership and all certificates of amendment thereto, together with executed copies of any powers of attorney pursuant to which any certificate has been executed;

(c) copies of the limited partnership's federal, state, and local income tax returns and reports, if any, for the 3 most recent years; and

(d) copies of any then-effective written partnership agreements and of any financial statements of the limited partnership for the 3 most recent years.

(2) These records must be available for inspection and copying at the reasonable request and at the expense of any partner during ordinary business hours.

History: **En. Sec. 8, Ch. 522, L. 1981.**

35-12-509. Nature of business. A limited partnership may carry on any business that a partnership without limited partners may carry on.

History: **En. Sec. 9, Ch. 522, L. 1981.**

35-12-510. Business transactions of partner with the partnership. Except as otherwise provided in the partnership agreement, a partner may lend money to and transact other business with the limited partnership and, subject to other applicable provisions of law, has the same rights and obligations with respect thereto as a person who is not a partner.

History: **En. Sec. 10, Ch. 522, L. 1981.**

35-12-511 through 35-12-520 reserved.

35-12-521. Secretary of state to establish fees. The secretary of state is authorized and required to set filing fees reasonably related to the costs of processing the applications and certificates. The secretary of state may establish fees for filing a certificate of limited partnership, certificate of amendment, certificate of cancellation, an application to reserve a name, a notice of transfer of a reserved name, an application for registration of a foreign limited partnership, a certificate of cancellation or correction of a foreign limited partnership or filing any other statement or report of a domestic or foreign limited partnership. The secretary of state shall maintain records sufficient to support the fee charged for the filing requirements.

History: En. Sec. 65, Ch. 522, L. 1981.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Fees relating to business corporations, 35-1-1201, 35-1-1202.

Fees relating to nonprofit corporations, 35-2-1001, 35-2-1002.

Part 6

Formation — Certificate of Limited Partnership

Part Cross-References

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.

Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.

Formation of religious corporations sole, Title 35, ch. 3, part 2.

Organization of professional service corporations, Title 35, ch. 4, part 2.

Formation and operation of business trusts, Title 35, ch. 5, part 2.

Formation of mining partnerships, Title 35, ch. 13, part 1.

Formation, articles of incorporation, and bylaws of cooperative associations, Title 35, ch. 15, part 2.

Formation of agricultural associations, Title 35, ch. 16, part 2.

Formation of cooperative agricultural marketing associations, Title 35, ch. 17, part 2.

Formation, articles, and bylaws of rural cooperative utilities, Title 35, ch. 18, part 2.

Formation of cemetery associations, Title 35, ch. 20, part 1.

Organization of mausoleum and columbarium authorities, Title 35, ch. 21, part 2.

35-12-601. Certificate of limited partnership. (1) Two or more persons desiring to form a limited partnership shall execute a certificate of limited partnership. The certificate must be filed in the office of the secretary of state and shall set forth:

(a) the name of the limited partnership;

(b) the general character of its business;

(c) the address of the office and the name and address of the agent for service of process required to be maintained by 35-12-507;

(d) the name and the business address of each partner (specifying the general partners and limited partners separately);

(e) the amount of cash and a description and statement of the agreed value of the other property or services contributed by each partner and which each partner has agreed to contribute in the future;

(f) the times at which or events on the happening of which any additional contributions agreed to be made by each partner are to be made;

(g) any power of a limited partner to grant an assignee of any part of his partnership interest the right to become a limited partner and the terms and conditions of the power;

(h) if agreed upon, the time at which or the events on the happening of which a partner may terminate his membership in the limited partnership and the amount of or the method of determining the distribution to which he may be entitled respecting his partnership interest and the terms and conditions of the termination and distribution;

(i) any right of a partner to receive distributions of property, including cash, from the limited partnership;

(j) any right of a partner to receive or of a general partner to make distributions to a partner which include a return of all or any part of the partner's contribution;

(k) any time at which or events on the happening of which the limited partnership is to be dissolved and its affairs wound up;

(l) any right of the remaining general partners to continue the business on the happening of an event of withdrawal of a general partner; and

(m) any other matters the partners, in their sole discretion, determine to include therein.

(2) A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the secretary of state or at any later time specified in the certificate of limited partnership if, in each case, there has been substantial compliance with the requirements of this section.

History: **En. Sec. 11, Ch. 522, L. 1981.**

35-12-602. Amendments to certificate. (1) A certificate of limited partnership is amended by filing a certificate of amendment thereto in the office of the secretary of state. The certificate shall set forth:

(a) the name of the limited partnership;

(b) the date of filing of the certificate; and

(c) the amendments to the certificate.

(2) An amendment to a certificate of limited partnership reflecting the occurrence of the event or events must be filed within 30 days after the happening of any of the following events:

(a) a change in the amount or character of the contribution of any partner or in any partner's obligation to make a contribution;

(b) the admission of a new partner;

(c) the withdrawal of a partner; or

(d) the continuation of the business under 35-12-1201(3) after an event of withdrawal of a general partner.

(3) A certificate of limited partnership must be amended promptly by any general partner upon becoming aware that any statement therein was false when made or that any arrangements or other facts described have changed, making the certificate inaccurate in any respect, but amendments to show changes of addresses of limited partners need be filed only once every 12 months.

(4) A certificate of limited partnership may be amended at any time for any other proper purpose the general partners may determine.

(5) No person is liable because an amendment to a certificate of limited partnership has not been filed to reflect the occurrence of any event referred to in subsection (2) of this section if the amendment is filed within the 30-day period specified in subsection (2).

History: **En. Sec. 12, Ch. 522, L. 1981.**

Cross-References

Admission of a new partner, 35-12-701, 35-12-801.

When person ceases to be general partner of limited partnership, 35-12-802.

35-12-603. Cancellation of certificate. A certificate of limited partnership must be canceled upon the dissolution and the commencement of winding up of the limited partnership and at any other time there are no remaining limited partners. A certificate of cancellation must be filed in the office of the secretary of state and shall set forth:

(1) the name of the limited partnership;

(2) the date of filing of the certificate of limited partnership;

(3) the reason for filing the certificate of cancellation;

(4) the effective date (which must be a date certain) of cancellation if it is not to be effective upon the filing of the certificate; and

(5) any other information the general partners filing the certificate may determine.

History: **En. Sec. 13, Ch. 522, L. 1981.**

Cross-References

When person ceases to be general partner of limited partnership, 35-12-802.

35-12-604. Execution of certificates. (1) Each certificate required by 35-12-601 through 35-12-609 to be filed in the office of the secretary of state shall be executed in the following manner:

(a) Each original certificate of limited partnership must be signed by each partner named therein.

(b) Each certificate of amendment must be signed by at least one general partner and by each other partner who is designated in the certificate as a new partner or whose contribution is described as having been increased.

(c) Each certificate of cancellation must be signed by each general partner.

(2) Any person may sign a certificate by an attorney-in-fact, but any power of attorney to sign a certificate relating to the admission or increased contribution of a partner must specifically describe the admission or increase.

(3) The execution of a certificate by a general partner constitutes an affirmation under the penalties of perjury that the facts stated therein are true.

History: **En. Sec. 14, Ch. 522, L. 1981.**

35-12-605. Amendment or cancellation by judicial act. If the persons required by 35-12-604 to execute any certificate of amendment or cancellation fail or refuse to do so, any other partner and any assignee of a partnership interest who is adversely affected by the failure or refusal may petition the district court to direct the amendment or cancellation. If the court finds that the amendment or cancellation is proper and that the persons so designated have failed or refused to execute the certificate, it shall order the secretary of state to record an appropriate certificate of amendment or cancellation.

History: **En. Sec. 15, Ch. 522, L. 1981.**

35-12-606. Filing in the office of the secretary of state. (1) One original and one copy of the certificate of limited partnership and of any certificates of amendment or cancellation (or of any judicial decree of amendment or cancellation) must be delivered to the secretary of state. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of his authority as a prerequisite to filing. Unless the secretary of state finds that any certificate does not conform to law, upon receipt of all filing fees required by law the secretary of state shall:

(a) endorse on the original and the copy the word "filed" and the day, month, and year of the filing thereof;

(b) file the original in his office; and

(c) return the copy to the person who filed it or his representative.

(2) Upon the filing of a certificate of amendment (or judicial decree of amendment) in the office of the secretary of state, the certificate of limited partnership is amended as set forth therein; and upon the effective date of a certificate of cancellation (or a judicial decree thereof), the certificate of limited partnership is canceled.

History: En. Sec. 16, Ch. 522, L. 1981; amd. Sec. 52, Ch. 131, L. 1983.

35-12-607. Liability for false statement in certificate. If any certificate of limited partnership or certificate of amendment or cancellation contains a false statement, one who suffers loss by reliance on the statement may recover damages for the loss from:

(1) any person actually executing the certificate or causing another to execute it on his behalf who knew and any general partner who knew or should have known the statement to be false at the time the certificate was executed; and

(2) any general partner who thereafter knew or should have known that any arrangements or other facts described in the certificate have changed, making the statement inaccurate in any respect, within a sufficient time before the statement was relied upon to have reasonably enabled that general partner to cancel or amend the certificate or to file a petition for its cancellation or amendment under 35-12-605.

History: En. Sec. 17, Ch. 522, L. 1981.

Cross-References

Nature of partner's liability, 35-10-307.

Liability of limited partner, 35-12-703.

35-12-608. Constructive notice. The fact that a certificate of limited partnership is on file in the office of the secretary of state is constructive notice that the partnership is a limited partnership and that the persons designated therein as limited partners are limited partners but is not constructive notice of any other fact.

History: En. Sec. 18, Ch. 522, L. 1981.

35-12-609. Delivery of certificates to limited partners. Upon the return by the secretary of state pursuant to 35-12-606 of any certificate marked "filed", the general partners shall promptly deliver or mail a copy of the certificate to each limited partner unless the partnership agreement provides otherwise.

History: En. Sec. 19, Ch. 522, L. 1981.

35-12-610 through 35-12-614 reserved.

35-12-615. Filing of a facsimile copy. (1) The secretary of state may treat a facsimile copy of a document that is required to be filed under this chapter and the signatures on the facsimile copy in the same manner as an original for purposes of this chapter, provided that he receives the original document within 5 working days of the receipt of the facsimile copy. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy. A facsimile copy may be filed under this section if it:

(a) is produced by a method of transmission of images in which the image is scanned at the transmitter, reconstructed at the receiving station, and duplicated on paper at the receiving station; and

(b) is legible and the same size as the original.

(2) During the 5-day period referred to in subsection (1), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.

(3) If the original document is not received within 5 working days of receipt of the facsimile copy as provided in subsection (1), the filing of the facsimile copy is void.

(4) A person who files a false document by facsimile copy is liable to the party aggrieved for three times the amount of damages resulting from the filing of the false document.

History: **En. Sec. 4, Ch. 273, L. 1989.**

Part 7

Limited Partners

35-12-701. Admission of additional limited partners. (1) After the filing of a limited partnership's original certificate of limited partnership, a person may be admitted as a new limited partner:

(a) in the case of a person acquiring a partnership interest directly from the limited partnership, upon compliance with the partnership agreement or, if the partnership agreement does not so provide, upon the written consent of all partners; and

(b) in the case of an assignee of a partnership interest of a partner who has the power, as provided in 35-12-1104, to grant the assignee the right to become a limited partner, upon the exercise of that power and compliance with any conditions limiting the grant or exercise of the power.

(2) In each case under subsection (1), the person acquiring the partnership interest becomes a limited partner only upon amendment of the certificate of limited partnership reflecting that fact.

History: **En. Sec. 20, Ch. 522, L. 1981.**

Cross-References

General powers and liabilities of general partner, 35-12-803.

35-12-702. Voting. Subject to the provisions of 35-12-703, the partnership agreement may grant to all or a specified group of the limited partners the right to vote (on a per capita or any other basis) upon any matter.

History: **En. Sec. 21, Ch. 522, L. 1981.**

35-12-703. Liability to third parties. (1) Except as provided in subsection (4), a limited partner as such is not liable for the obligations of a limited partnership unless, in addition to the exercise of his rights and powers as a limited partner, he takes part in the control of the business. However, if the limited partner's participation in the control of the business is not substantially the same as the exercise of the powers of a general partner, he is liable only to persons who transact business with the limited partnership with actual knowledge of his participation in control.

(2) A limited partner does not participate in the control of the business within the meaning of subsection (1) solely by doing one or more of the following:

(a) being a contractor for or an agent or employee of the limited partnership or of a general partner;

(b) consulting with and advising a general partner with respect to the business of the limited partnership;

(c) acting as surety for the limited partnership;

(d) approving or disapproving an amendment to the partnership agreement; and

(e) voting on one or more of the following matters:

(i) the dissolution and winding up of the limited partnership;

(ii) the sale, exchange, lease, mortgage, pledge, or other transfer of all or substantially all of the assets of the limited partnership other than in the ordinary course of its business;

(iii) the incurrence of indebtedness by the limited partnership other than in the ordinary course of its business;

(iv) a change in the nature of the business; or

(v) the removal of a general partner.

(3) The enumeration in subsection (2) does not mean that the possession or exercise of any other powers by a limited partner constitutes participation by him in the business of the limited partnership.

(4) A limited partner who knowingly permits his name to be used in the name of the limited partnership, except under circumstances permitted by subsections (2)(a) and (2)(b) of 35-12-505, is liable to creditors who extend credit to the limited partnership without actual knowledge that the limited partner is not a general partner.

History: En. Sec. 22, Ch. 522, L. 1981.

Cross-References

Limited partnership defined, 35-12-504.

Partnership name not to contain surname of limited partner — exceptions, 35-12-505.

35-12-704. Person erroneously believing himself a limited partner. (1) Except as provided in subsection (2), a person who makes a contribution to a business enterprise and erroneously and in good faith believes that he has become a limited partner in the enterprise is not a general partner in the enterprise and is not bound by its obligations by reason of making the contribution, receiving distributions from the enterprise, or exercising any rights of a limited partner if, on ascertaining the mistake, he:

(a) causes an appropriate certificate of limited partnership or a certificate of amendment to be executed and filed; or

(b) withdraws from future equity participation in the enterprise by executing and filing in the office of the secretary of state a certificate declaring withdrawal under this section.

(2) Any person who makes a contribution of the kind described in subsection (1) is liable as a general partner to any third party who transacts business with the enterprise before the person withdraws and an appropriate certificate if any is filed to show the withdrawal or before an appropriate certificate is filed to show his status as a limited partner and, in the case of an amendment, after expiration of the 30-day period for filing an amendment relating to the person as a limited partner under 35-12-602, but in each case only if the third party actually believed in good faith that the person was a general partner at the time of the transaction.

History: **En. Sec. 23, Ch. 522, L. 1981; amd. Sec. 1, Ch. 85, L. 1985.**

Cross-References

Secretary of state to establish fees, 35-12-521.

35-12-705. Right to information. Each limited partner has the right to:

(1) inspect and copy any of the partnership records required by 35-12-508 to be maintained; and

(2) obtain from the general partners from time to time upon reasonable demand:

(a) true and full information regarding the state of the business and financial condition of the limited partnership;

(b) promptly after becoming available, a copy of the limited partnership's federal, state, and local income tax returns for each year; and

(c) any other information regarding the affairs of the limited partnership as is just and reasonable.

History: **En. Sec. 24, Ch. 522, L. 1981.**

Cross-References

Rights of partners, 35-10-301, 35-10-402, 35-10-404, 35-10-406; Title 35, ch. 10, part 5; 35-10-606, 35-10-609 through 35-10-611, 35-10-614.

Rights of estate, 35-12-1105.

Part 8

General Partners

35-12-801. Admission. After the filing of a limited partnership's original certificate of limited partnership, new general partners may be admitted only with the specific written consent of each partner.

History: **En. Sec. 25, Ch. 522, L. 1981.**

35-12-802. When person ceases to be general partner of limited partnership. Except as otherwise approved by the specific written consent, at the time, of all partners, a person ceases to be a general partner of a limited partnership on the happening of any of the following events:

(1) the general partner withdraws from the limited partnership as provided in 35-12-1002;

(2) the general partner ceases to be a member of the limited partnership as provided in 35-12-1102;

(3) the general partner is removed as a general partner in accordance with the partnership agreement;

(4) unless otherwise provided in the certificate of limited partnership, the general partner:

(a) makes an assignment for the benefit of creditors;

(b) files a voluntary petition in bankruptcy;

(c) is adjudicated a bankrupt or insolvent;

(d) files any petition or answer seeking for himself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or administrative rule;

(e) files any answer or other pleading admitting or failing to contest the material allegations of a petition filed against him in any proceeding of this nature; or

(f) seeks, consents to, or acquiesces in the appointment of any trustee, receiver, or liquidator of the general partner or of all or any substantial part of his properties;

(5) unless otherwise provided in the certificate of limited partnership, if, within 120 days after the commencement of any proceeding against the general partner seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or administrative rule, the proceeding has not been dismissed or if, within 90 days after the appointment without his consent or acquiescence of any trustee, receiver, or liquidator of the general partner or of all or any substantial part of his properties, the appointment is not vacated or stayed or if, within 90 days after the expiration of any stay, the appointment is not vacated;

(6) in the case of a general partner who is a natural person:

(a) his death; or

(b) the entry by a court of competent jurisdiction adjudicating him incompetent to manage his person or his property;

(7) in the case of a general partner who is acting as such in the capacity of a trustee of a trust, the termination of the trust (but not merely the substitution of a new trustee);

(8) in the case of a general partner that is a partnership, the dissolution and commencement of winding up of the partnership;

(9) in the case of a general partner that is a corporation, the filing of a certificate of dissolution or its equivalent for the corporation or the revocation of its charter; and

(10) in the case of an estate, the distribution by the fiduciary of all of the estate's interest in the partnership.

History: En. Sec. 26, Ch. 522, L. 1981.

35-12-803. General powers and liabilities. (1) Except as otherwise provided in this chapter and in the partnership agreement, a general partner of a limited partnership has all the rights and powers and is subject to all the restrictions of a partner in a partnership without limited partners.

(2) Except as otherwise provided in this chapter, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to persons other than the partnership and the other partners.

Except as provided in this chapter or in the partnership agreement, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners to the partnership and to the other partners.

History: **En. Sec. 27, Ch. 522, L. 1981; amd. Sec. 2, Ch. 85, L. 1985.**

Cross-References

Cancellation or amendment of partnership certificate, 35-12-602, 35-12-603.

Limited partners — liability to third parties, 35-12-703.

35-12-804. Contributions by a general partner. A general partner may make contributions to a limited partnership and share in the profits and losses of and in distributions from the limited partnership as a general partner. A general partner may also make contributions to and share in profits, losses, and distributions as a limited partner. A person who is both a general partner and a limited partner has all the rights and powers and is subject to all the restrictions and liabilities of a general partner and also has, except as otherwise provided in the partnership agreement, all powers and is subject to the restrictions of a limited partner to the extent he is participating in the partnership as a limited partner.

History: **En. Sec. 28, Ch. 522, L. 1981.**

35-12-805. Voting. The partnership agreement may grant to all or a specified group of general partners the right to vote (on a per capita or any other basis), separately or with all or any class of the limited partners, on any matter.

History: **En. Sec. 29, Ch. 522, L. 1981.**

Part 9

Finance

35-12-901. Form of contributions. The contribution of a partner may be in cash, property, or services rendered or a promissory note or other obligation to contribute cash or property or to perform services.

History: **En. Sec. 30, Ch. 522, L. 1981.**

35-12-902. Liability for contributions. (1) Except as otherwise provided in the certificate of limited partnership, a partner is liable to the limited partnership for any promise to contribute cash or property or to perform services regardless of whether he is personally unable to perform because of disability, death, or any other reason. If a partner does not make the required contribution of property or services, he is obligated at the option of the limited partnership to contribute cash equal to that portion of the value (as stated in the certificate of limited partnership) of the stated contribution that has not been made.

(2) Unless otherwise provided in the partnership agreement, the obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all of the partners. Notwithstanding a compromise so authorized, a creditor of a limited partnership who extends credit or whose claim arises after the filing of the certificate of limited partnership or an amendment

thereto which, in either case, reflects the obligation and before the amendment or cancellation thereof to reflect the compromise may enforce the precompromise obligation.

History: **En. Sec. 31, Ch. 522, L. 1981.**

Cross-References

Nature of partner's liability, 35-10-307.

35-12-903. Allocation of profits and losses. The profits and losses of a limited partnership must be allocated among the partners and among classes of partners in the manner provided in the partnership agreement. If the partnership agreement does not so provide, profits and losses must be allocated on the basis of the value (as stated in the certificate of limited partnership) of the contributions actually made by each partner to the extent they have not been returned.

History: **En. Sec. 32, Ch. 522, L. 1981.**

35-12-904. Allocation of distributions. Distributions of cash or other assets of a limited partnership must be allocated among the partners and among classes of partners in the manner provided in the partnership agreement. If the partnership agreement does not so provide, distributions must be made on the basis of the value (as stated in the certificate of limited partnership) of the contributions actually made by each partner to the extent they have not been returned.

History: **En. Sec. 33, Ch. 522, L. 1981.**

Part 10

Distribution and Withdrawals

35-12-1001. Interim distributions. Except as otherwise provided in 35-12-1001 through 35-12-1008, a partner is entitled to receive distributions from a limited partnership before his withdrawal from the limited partnership and before the dissolution and winding up thereof:

(1) to the extent and at the times or on the happening of the events specified in the partnership agreement; and

(2) if any distribution constitutes a return of any part of his contribution under 35-12-1008(3), to the extent and at the time or on the happening of the events specified in the certificate of limited partnership.

History: **En. Sec. 34, Ch. 522, L. 1981.**

35-12-1002. Withdrawal of general partner. A general partner may withdraw from a limited partnership at any time by giving written notice to the other partners, but if the withdrawal violates the partnership agreement, the limited partnership may recover from the withdrawing general partner damages for breach of the partnership agreement and offset the damages against the amount otherwise distributable to him.

History: **En. Sec. 35, Ch. 522, L. 1981.**

Cross-References

Rights of partners after dissolution to application of partnership property or to continue business, 35-10-610.

35-12-1003. Withdrawal of limited partner. A limited partner may withdraw from a limited partnership at the time or on the happening of the events specified in the certificate of limited partnership and in accordance with any procedures provided in the partnership agreement. If the certificate of limited partnership does not specify the time or the events on the happening of which a limited partner may withdraw from the limited partnership or a definite time for the dissolution and winding up of the limited partnership, a limited partner may withdraw from the limited partnership upon not less than 6 months' prior written notice to each general partner at his address on the books of the limited partnership at its office in this state.

History: **En. Sec. 36, Ch. 522, L. 1981.**

35-12-1004. Distributions upon withdrawal. Except as provided in 35-12-1001 through 35-12-1008, upon withdrawal any withdrawing partner is entitled to receive any distributions to which he is entitled under the partnership agreement and, if not provided, he is entitled to receive, within a reasonable time after withdrawal, the fair value of his interest in the limited partnership as of the date of withdrawal, based upon his right to share in distributions from the limited partnership.

History: **En. Sec. 37, Ch. 522, L. 1981.**

35-12-1005. Distributions in kind. Except as provided in the certificate of limited partnership, a partner, regardless of the nature of his contribution, has no right to demand and receive any distribution from a limited partnership in any form other than cash. Except as provided in the partnership agreement, a partner may not be compelled to accept a distribution of any asset in kind from a limited partnership to the extent that the percentage of the asset distributed to him exceeds a percentage of that asset which is equal to the percentage in which he shares in distributions from the limited partnership.

History: **En. Sec. 38, Ch. 522, L. 1981.**

35-12-1006. Right to distributions. At the time a partner becomes entitled to receive a distribution, he has the status of and is entitled to all of the remedies available to a creditor of the limited partnership with respect to the distribution.

History: **En. Sec. 39, Ch. 522, L. 1981.**

35-12-1007. Limitations on distributions. A partner may not receive a distribution from a limited partnership to the extent that, after giving effect to the distribution, all liabilities of the limited partnership other than liabilities to partners on account of their partnership interests exceed the fair value of the partnership's assets.

History: **En. Sec. 40, Ch. 522, L. 1981.**

35-12-1008. Liability upon return of contributions. (1) If a partner has received the return of any part of his contribution without violation of the partnership agreement or this chapter, for a period of 1 year thereafter he is liable to the limited partnership for the amount of his contribution returned, but only to the extent necessary to discharge the limited partnership's liabilities to creditors who extended credit to the limited partnership during the period the contribution was held by the partnership.

(2) If a partner has received the return of any part of his contribution in violation of the partnership agreement or this chapter, for a period of 6 years thereafter he is liable to the limited partnership for the amount of the contribution wrongfully returned.

(3) A partner has received a return of his contribution to the extent that a distribution to him reduces his share of the fair value of the net assets of the limited partnership below the value (as set forth in the certificate of limited partnership) of his contributions which have not theretofore been distributed to him.

History: **En. Sec. 41, Ch. 522, L. 1981.**

Part 11

Assignment of Partnership Interests

35-12-1101. Nature of partnership interest. A partnership interest is a partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets. A partnership interest is personal property.

History: **En. Sec. 42, Ch. 522, L. 1981.**

Cross-References

Partnership property, 35-10-203.

Conveyance of partnership's real property, 35-10-302.

Property rights of a partner, Title 35, ch. 10, part 5.

Rights of partner after dissolution, 35-10-610.

Rights of partner when partnership contract rescinded, 35-10-611.

35-12-1102. Assignment of partnership interest. Except as otherwise provided in the partnership agreement, a partnership interest is assignable in whole or in part. An assignment of a partnership interest does not dissolve a limited partnership or entitle the assignee to become a partner or to exercise any of the rights thereof. An assignment only entitles the assignee to receive, to the extent assigned, any distributions to which the assignor would be entitled. Except as otherwise provided in the partnership agreement, a partner ceases to be a partner upon assignment of all his partnership interest.

History: **En. Sec. 43, Ch. 522, L. 1981.**

Cross-References

Nature of partnership liability, 35-10-307.

Cancellation or amendment of partnership certificate, 35-12-602, 35-12-603.

35-12-1103. Rights of creditors. On due application to a court of competent jurisdiction by any judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment debt, with interest thereon. To the extent so charged, the judgment creditor has only the rights of an assignee of the partnership interest. This chapter does not deprive any partner of the benefit of any exemption laws applicable to his partnership interest.

History: **En. Sec. 44, Ch. 522, L. 1981.**

Cross-References

Property exempt from execution, Title 25, ch. 13, part 6.

Relative rights of different creditors, 31-2-105.

35-12-1104. Right of assignee to become limited partner. (1) An assignee of a partnership interest, including an assignee of a general partner, may become a limited partner if and to the extent that:

(a) the assignor gives the assignee that right in accordance with authority described in the certificate of limited partnership; or

(b) in the absence of that authority, all other partners consent.

(2) An assignee who has become a limited partner has, to the extent assigned, all the rights and powers and is subject to all the restrictions and liabilities of a limited partner under the partnership agreement and this chapter. An assignee who becomes a limited partner is also liable for the obligations of his assignor to make and return contributions as provided in 35-12-1001 through 35-12-1008, but the assignee is not obligated for liabilities unknown to the assignee at the time he became a limited partner and which could not be ascertained from the certificate of limited partnership.

(3) If an assignee of a partnership interest becomes a limited partner, the assignor is not released from the liability to the limited partnership under 35-12-607 and 35-12-902.

History: **En. Sec. 45, Ch. 522, L. 1981.**

35-12-1105. Power of estate of deceased or incompetent partner. If a partner who is a natural person dies or a court of competent jurisdiction adjudges him to be incompetent to manage his person or his property, the partner's personal representative, guardian, conservator, or other legal representative may exercise all of the partner's rights for the purpose of settling his estate or administering his property, including any power the partner had to give an assignee the right to become a limited partner. If a partner that is a corporation, trust, or other entity other than a natural person is dissolved or terminated, those powers may be exercised by the legal representative or successor of the partner.

History: **En. Sec. 46, Ch. 522, L. 1981.**

Cross-References

Rights of estate of deceased partner, 35-10-614.

Cancellation or amendment of partnership certificate, 35-12-602, 35-12-603.

Assignment of partnership interest, 35-12-1102.

Probate — powers and duties of surviving partner, Title 72, ch. 12, part 7.

Part 12

Dissolution

Part Cross-References

Dissolution and liquidation of business corporations, Title 35, ch. 1, part 9.

Dissolution and liquidation of nonprofit corporations, Title 35, ch. 2, part 7.

Involuntary corporate dissolution, Title 35, ch. 6.

Dissolution and winding up of partnerships in general, Title 35, ch. 10, part 6.

Sale or disposition of assets of cooperative associations, 35-15-506.

Sale or disposition of assets of cooperative agricultural marketing associations, 35-17-506.

Dissolution of rural cooperative utilities, 35-18-404, 35-18-405.

35-12-1201. Nonjudicial dissolution. A limited partnership is dissolved and its affairs must be wound up on the occurrence of the first of the following:

(1) at the time or on the happening of the events specified in the certificate of limited partnership;

(2) on the unanimous written consent of all partners;

(3) on the happening of an event of withdrawal of a general partner unless at the time there is at least one other general partner and the certificate of limited partnership permits the business of the limited partnership to be carried on by the remaining general partner and he does so, but the limited partnership may not be dissolved or wound up by reason of any event of withdrawal if, within 90 days after the withdrawal, all partners agree in writing to continue the business of the limited partnership and to the appointment of one or more new general partners if necessary or desired; or

(4) on entry of a decree of judicial dissolution in accordance with 35-12-1202.

History: En. Sec. 47, Ch. 522, L. 1981.

35-12-1202. Dissolution by decree of court. On application by or for a partner, the district court may decree a dissolution of a limited partnership whenever it is not reasonably practicable to carry on the business in conformity with the partnership agreement.

History: En. Sec. 48, Ch. 522, L. 1981.

35-12-1203. Winding up. Unless otherwise provided in the partnership agreement, the general partners who have not wrongfully dissolved the limited partnership or, if none, the limited partners may wind up the limited partnership's affairs; but any partner, his legal representative, or his assignee, upon cause shown, may obtain winding up by the district court.

History: En. Sec. 49, Ch. 522, L. 1981.

Cross-References

Right to wind up partnership, 35-10-609.

35-12-1204. Distribution of assets. Upon the winding up of a limited partnership, the assets shall be distributed as follows:

(1) to creditors, including partners who are creditors (to the extent otherwise permitted by law), in satisfaction of liabilities of the limited partnership other than liabilities for distributions to partners pursuant to 35-12-1001 or 35-1-1004.

(2) except as otherwise provided in the partnership agreement, to partners and ex-partners in satisfaction of liabilities for distributions pursuant to 35-12-1001 or 35-12-1004; and

(3) except as otherwise provided in the partnership agreement, to partners first for the return of their contributions and second, respecting their partnership interests, in the proportions in which the partners share in distributions.

History: En. Sec. 50, Ch. 522, L. 1981.

Part 13

Foreign Limited Partnerships

35-12-1301. Law governing. Subject to the constitution and public policy of this state, the laws of the state under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its limited partners, and a foreign limited partnership may not be denied registration by reason of any difference between those laws and the laws of this state.

History: **En. Sec. 51, Ch. 522, L. 1981.**

35-12-1302. Registration. Before transacting business in this state, a foreign limited partnership must register with the secretary of state. In order to register, a foreign limited partnership shall submit to the secretary of state one original and one copy of the application for registration as a foreign limited partnership, signed and sworn to by a general partner and setting forth:

(1) the name of the foreign limited partnership and, if different, the name under which it proposes to transact business and register in this state;

(2) the state in which it was formed and date of its formation;

(3) the general character of the business it proposes to transact in this state;

(4) the name and address of any agent for service of process on the foreign limited partnership whom the foreign limited partnership desires to appoint, which agent must be an individual resident of this state, a domestic corporation, or a foreign corporation authorized to do business in this state and with a place of business in this state;

(5) a statement that the secretary of state is appointed the agent of the foreign limited partnership for service of process if no agent has been appointed pursuant to subsection (4) or, if appointed, the agent's authority has been revoked or the agent cannot be found or served with the exercise of reasonable diligence;

(6) the address of the office required to be maintained in the state of its organization by the laws of that state or, if not so required, of the principal office of the foreign limited partnership; and

(7) if the certificate of limited partnership filed in the foreign limited partnership's state of organization is not required to include the names and business addresses of the partners, a list of the names and addresses.

History: **En. Sec. 52, Ch. 522, L. 1981; amd. Sec. 53, Ch. 131, L. 1983.**

Cross-References

Service of process, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

35-12-1303. Issuance of registration. (1) If the secretary of state finds that an application for registration conforms to law and all requisite fees have been paid, he shall:

(a) endorse on the application the word "filed" and the month, day, and year of the filing thereof;

(b) file in his office the original of the application; and

(c) issue a certificate of registration to transact business in this state.

(2) The certificate of registration, together with a copy of the application, must be returned to the person who filed the application or his representative.

History: **En. Sec. 53, Ch. 522, L. 1981; amd. Sec. 54, Ch. 131, L. 1983.**

35-12-1304. Name. A foreign limited partnership may register with the secretary of state under any name (whether or not it is the name under which it is registered in its state of organization) that includes the words "limited partnership" and that could be registered by a domestic limited partnership.

History: **En. Sec. 54, Ch. 522, L. 1981.**

35-12-1305. Changes and amendments. If any statement in a foreign limited partnership's application for registration was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited partnership shall promptly file in the office of the secretary of state a certificate, signed and sworn to by a general partner, correcting the statement.

History: **En. Sec. 55, Ch. 522, L. 1981.**

35-12-1306. Cancellation of registration. A foreign limited partnership may cancel its registration by filing with the secretary of state a certificate of cancellation, signed and sworn to by a general partner. A cancellation does not terminate the authority of the secretary of state to accept service of process on the foreign limited partnership with respect to claims for relief arising out of the transaction of business in this state.

History: **En. Sec. 56, Ch. 522, L. 1981.**

35-12-1307. Transaction of business without registration. (1) A foreign limited partnership transacting business in this state without registration may not maintain any action, suit, or proceeding in any court of this state until it has registered.

(2) The failure of a foreign limited partnership to register in this state does not impair the validity of any contract or act of the foreign limited partnership and does not prevent the foreign limited partnership from defending any action, suit, or proceeding in any court of this state.

(3) A limited partner of a foreign limited partnership is not liable as a general partner of the foreign limited partnership solely by reason of the foreign limited partnership's transacting business in this state without registration.

(4) A foreign limited partnership, by transacting business in this state without registration appoints the secretary of state as its agent for service of process with respect to claims for relief arising out of the transaction of business in this state.

History: **En. Sec. 57, Ch. 522, L. 1981.**

Cross-References

Effect of transacting business without certificate, 30-13-215.

35-12-1308. Action by attorney general. The attorney general may bring an action to restrain a foreign limited partnership from transacting business in this state in violation of 35-12-1301 through 35-12-1307.

History: **En. Sec. 58, Ch. 522, L. 1981; amd. Sec. 89, Ch. 370, L. 1987.**

Part 14

Derivative Actions

35-12-1401. Right of action. A limited partner may bring a derivative action in the right of a limited partnership to recover a judgment in its favor if the general partners having authority to do so have refused to bring the action or an effort to cause those general partners to bring the action is not likely to succeed.

History: **En. Sec. 59, Ch. 522, L. 1981.**

35-12-1402. Proper plaintiff. In a derivative action, the plaintiff must be a partner at the time of bringing the action and at the time of the transaction of which he complains or his status as a partner must have devolved upon him by operation of law or pursuant to the terms of the partnership agreement from a person who was a partner at the time of the transaction.

History: **En. Sec. 60, Ch. 522, L. 1981.**

35-12-1403. Pleading. In any derivative action, the complaint shall set forth with particularity the effort of the plaintiff to secure initiation of the action by a general partner having authority to do so or the reasons for not making the effort.

History: **En. Sec. 61, Ch. 522, L. 1981.**

35-12-1404. Expenses. If a derivative action is successful, in whole or in part, or anything is received by the plaintiff as a result of a judgment, compromise, or settlement of an action or claim, the court may award the plaintiff reasonable expenses, including reasonable attorney's fees, and shall direct him to account to the limited partnership for the remainder of the proceeds so received by him.

History: **En. Sec. 62, Ch. 522, L. 1981.**

CHAPTER 13

MINING PARTNERSHIPS

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Chapter Cross-References

Abuse of property held jointly or in common — action, 70-1-311, 70-19-202.

Part 1

Formation

Part Cross-References

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.

Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.

Formation of religious corporations sole, Title 35, ch. 3, part 2.

Organization of professional service corporations, Title 35, ch. 4, part 2.

Formation and operation of business trusts, Title 35, ch. 5, part 2.

Formation of limited partnerships, Title 35, ch. 12, part 6.

Formation, articles of incorporation, and bylaws of cooperative associations, Title 35, ch. 15, part 2.

Formation of agricultural associations, Title 35, ch. 16, part 2.

Formation of cooperative agricultural marketing associations, Title 35, ch. 17, part 2.

Formation, articles, and bylaws of rural cooperative utilities, Title 35, ch. 18, part 2.

Formation of cemetery associations, Title 35, ch. 20, part 1.

Organization of mausoleum and columbarium authorities, Title 35, ch. 21, part 2.

35-13-101. When a mining partnership exists. A mining partnership exists when two or more persons who own or acquire a mining claim for the purpose of working it and extracting the mineral therefrom actually engage in working the same.

History: En. Sec. 3350, Civ. C. 1895; re-en. Sec. 5535, Rev. C. 1907; re-en. Sec. 8050, R.C.M. 1921; Cal. Civ. C. Sec. 2511; re-en. Sec. 8050, R.C.M. 1935; R.C.M. 1947, 63-1001.

35-13-102. Express agreement not necessary to formation. An express agreement to become partners or to share the profits and losses of mining is not necessary to the formation and existence of a mining partnership. The relation arises from the ownership of shares or interests in the mine and working the same for the purpose of extracting the minerals therefrom.

History: En. Sec. 3351, Civ. C. 1895; re-en. Sec. 5536, Rev. C. 1907; re-en. Sec. 8051, R.C.M. 1921; Cal. Civ. C. Sec. 2512; re-en. Sec. 8051, R.C.M. 1935; R.C.M. 1947, 63-1002.

Part 2

Relations Between Partners and with Third Persons

Part Cross-References

Relations among partners, partnerships, and third persons, Title 35, ch. 10, parts 3, 4.

35-13-201. When contract in writing is binding. No member of a mining partnership or other agent or manager thereof can by a contract in writing bind the partnership, except by express authority derived from the members thereof.

History: En. Sec. 3358, Civ. C. 1895; re-en. Sec. 5543, Rev. C. 1907; re-en. Sec. 8058, R.C.M. 1921; Cal. Civ. C. Sec. 2519; re-en. Sec. 8058, R.C.M. 1935; R.C.M. 1947, 63-1009.

35-13-202. Owners of majority interest govern. The decision of the members owning a majority of the shares or interest in a mining partnership binds it in the conduct of its business.

History: En. Sec. 3359, Civ. C. 1895; re-en. Sec. 5544, Rev. C. 1907; re-en. Sec. 8059, R.C.M. 1921; Cal. Civ. C. Sec. 2520; re-en. Sec. 8059, R.C.M. 1935; R.C.M. 1947, 63-1010.

35-13-203. Mine — partnership property. The mining ground owned and worked by partners in mining, whether purchased with partnership funds or not, is partnership property.

History: En. Sec. 3354, Civ. C. 1895; re-en. Sec. 5539, Rev. C. 1907; re-en. Sec. 8054, R.C.M. 1921; Cal. Civ. C. Sec. 2515; re-en. Sec. 8054, R.C.M. 1935; R.C.M. 1947, 63-1005.

35-13-204. Profits and losses — how shared. A member of a mining partnership shares in the profits and losses thereof in the proportion which the interest or share he owns in the mine bears to the whole partnership capital or whole number of shares.

History: En. Sec. 3352, Civ. C. 1895; re-en. Sec. 5537, Rev. C. 1907; re-en. Sec. 8052, R.C.M. 1921; Cal. Civ. C. Sec. 2513; re-en. Sec. 8052, R.C.M. 1935; R.C.M. 1947, 63-1003.

35-13-205. Lien of partner for debts due creditors. Each member of a mining partnership has a lien on the partnership property for the debts due the creditors thereof and for money advanced by him for its uses. This lien exists notwithstanding there is an agreement among the partners that it must not.

History: En. Sec. 3353, Civ. C. 1895; re-en. Sec. 5538, Rev. C. 1907; re-en. Sec. 8053, R.C.M. 1921; Cal. Civ. C. Sec. 2514; re-en. Sec. 8053, R.C.M. 1935; R.C.M. 1947, 63-1004.

Cross-References

Liens generally, Title 71, ch. 3, part 1.

35-13-206. Partnership not dissolved by sale of interest — purchaser becomes partner. One of the partners in a mining partnership may convey his interest in the mine and business without dissolving the partnership. The purchaser from the date of his purchase becomes a member of the partnership.

History: En. Sec. 3355, Civ. C. 1895; re-en. Sec. 5540, Rev. C. 1907; re-en. Sec. 8055, R.C.M. 1921; Cal. Civ. C. Sec. 2516; re-en. Sec. 8055, R.C.M. 1935; R.C.M. 1947, 63-1006.

35-13-207. Purchaser takes subject to liens — exception for good faith purchaser. A purchaser of an interest in the mining ground of a mining partnership takes it subject to the liens existing in favor of the partners for debts due all creditors thereof or advances made for the benefit of the partnership unless he purchased in good faith for a valuable consideration without notice of such lien.

History: En. Sec. 3356, Civ. C. 1895; re-en. Sec. 5541, Rev. C. 1907; re-en. Sec. 8056, R.C.M. 1921; Cal. Civ. C. Sec. 2517; re-en. Sec. 8056, R.C.M. 1935; R.C.M. 1947, 63-1007.

35-13-208. When purchaser takes with notice of liens. The purchaser of the interest of a partner in a mine when the partnership is engaged in working it takes with notice of all liens resulting from the relation of the partners to each other and to the creditors of the partnership.

History: En. Sec. 3357, Civ. C. 1895; re-en. Sec. 5542, Rev. C. 1907; re-en. Sec. 8057, R.C.M. 1921; Cal. Civ. C. Sec. 2518; re-en. Sec. 8057, R.C.M. 1935; R.C.M. 1947, 63-1008.

CHAPTER 14

RESERVED

CHAPTER 15

COOPERATIVE ASSOCIATIONS

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35-15-506. Sale or disposition of assets.
35-15-507. Statute of limitations.

Chapter Cross-References

Fire department relief associations, 19-11-102.

Unfair trade practices, 30-14-214, 30-14-216, 30-14-224.

Montana Business Corporation Act — applicability, 35-1-103.

Agricultural associations, Title 35, ch. 16.

Cooperative agricultural marketing associations, Title 35, ch. 17.

Livestock protective associations, Title 81, ch. 6.

Part 1

General

Part Cross-References

General corporate law — applicability, 35-1-103.

35-15-101. Reserved power of regulation. The legislature hereby reserves the power to prescribe such regulations and provisions governing any and all associations incorporated under this chapter as it may deem advisable.

Such regulations and provisions shall be binding on associations incorporated at the time such regulations may be made, as well as on those thereafter incorporated.

History: **En. Sec. 880, Civ. C. 1895; re-en. Sec. 4220, Rev. C. 1907; re-en. Sec. 6385, R.C.M. 1921; re-en. Sec. 6385, R.C.M. 1935; R.C.M. 1947, 14-211.**

35-15-102. Requirements of chapter exclusive. No association organized under this chapter shall be required to do or perform anything not specially required herein in order to become a corporation, or to continue its business as such.

History: **En. Sec. 4, Ch. 83, L. 1915; re-en. Sec. 6389, R.C.M. 1921; re-en. Sec. 6389, R.C.M. 1935; R.C.M. 1947, 14-215(part).**

Cross-References

Business corporation law — applicability, 35-1-103.

Effect of merger or consolidation, 35-15-505.

35-15-103. Powers. (1) Associations formed under this chapter shall be bodies corporate and politic for the period for which they are organized, not exceeding 40 years.

(2) Associations formed under this chapter may:

(a) sue and be sued;

(b) have a common seal which they may alter or renew at pleasure;

(c) own, possess, and enjoy so much real and personal property as shall be necessary for the transaction of their business and sell and dispose of the same; and

(d) borrow money and pledge their property, both real and personal, to secure the payment thereof.

(3) Associations formed under this chapter shall have and exercise all powers necessary and requisite to carry into effect the objects for which they may be formed and such as are usually exercised by cooperative associations, subject to all duties, restrictions, and liabilities set forth in the general laws in relation to similar corporations, except so far as the same may be limited or enlarged by this chapter.

History: **En. Sec. 874, Civ. C. 1895; re-en. Sec. 4214, Rev. C. 1907; re-en. Sec. 6379, R.C.M. 1921; Cal. Civ. C. Sec. 653b; re-en. Sec. 6379, R.C.M. 1935; R.C.M. 1947, 14-205.**

Cross-References

Business corporation law — applicability, 35-1-103.

Effect of merger or consolidation, 35-15-505.

Powers of cooperatives, 35-18-106.

Part 2

Formation — Articles of Incorporation — Bylaws

Part Cross-References

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.

Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.

Formation of religious corporations sole, Title 35, ch. 3, part 2.

Organization of professional service corporations, Title 35, ch. 4, part 2.

Formation and operation of business trusts, Title 35, ch. 5, part 2.

Formation of limited partnerships, Title 35, ch. 12, part 6.

Formation of mining partnerships, Title 35, ch. 13, part 1.

Formation of agricultural associations, Title 35, ch. 16, part 2.

Formation of cooperative agricultural marketing associations, Title 35, ch. 17, part 2.

Formation, articles, and bylaws of rural cooperative utilities, Title 35, ch. 18, part 2.

Formation of cemetery associations, Title 35, ch. 20, part 1.

Organization of mausoleum and columbarium authorities, Title 35, ch. 21, part 2.

35-15-201. Incorporation. (1) Whenever any number of persons, not less than three or more than seven, may desire to become incorporated as a cooperative association for the purpose of trade or of prosecuting any branch of industry or the purchase and distribution of commodities for consumption or in the borrowing or lending of money among members for industrial purposes, they shall make a statement to that effect under their hands setting forth:

(a) the name of the proposed corporation;

(b) its capital stock;

(c) its location;

(d) the duration of the association; and

(e) the particular branch or branches of industry which they intend to prosecute.

(2) In addition to provisions required in subsection (1), the statement of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-202(2)(a)(v).

(3) The statement shall be filed in the office of the secretary of state as the articles of incorporation of the association. The secretary of state shall thereupon issue to such persons a license as commissioners to open books for subscription to the capital stock of such corporation, at such time and place as they may determine, for which he shall receive the fee of $20.

History: En. Sec. 870, Civ. C. 1895; re-en. Sec. 4210, Rev. C. 1907; re-en. Sec. 6375, R.C.M. 1921; Cal. Civ. C. Sec. 653b; re-en. Sec. 6375, R.C.M. 1935; amd. Sec. 1, Ch. 273, L. 1955; amd. Sec. 2, Ch. 117, L. 1961; R.C.M. 1947, 14-201; amd. Sec. 31, Ch. 174, L. 1983; amd. Sec. 3, Ch. 559, L. 1987.

35-15-202. Limit on subscription or control of common stock — one share per person. No person shall be permitted to subscribe for or control or own more or less than one share of the common stock of such association.

History: En. Sec. 871, Civ. C. 1895; re-en. Sec. 4211, Rev. C. 1907; re-en. Sec. 6376, R.C.M. 1921; amd. Sec. 1, Ch. 135, L. 1933; re-en. Sec. 6376, R.C.M. 1935; R.C.M. 1947, 14-202.

Cross-References

Assignment of stock, 35-15-403.

35-15-203. First meeting. As soon as 10 or more shares of the capital stock shall be subscribed, the commissioners shall convene a meeting of the subscribers for the purpose of electing directors, adopting bylaws, and transacting such other business as shall properly come before them. Notice thereof shall be given to each subscriber by depositing same in the post office, properly addressed, at least 10 days before the time fixed, stating the object, time, and place of said meeting.

History: En. Sec. 872, Civ. C. 1895; re-en. Sec. 4212, Rev. C. 1907; re-en. Sec. 6377, R.C.M. 1921; re-en. Sec. 6377, R.C.M. 1935; amd. Sec. 2, Ch. 273, L. 1955; amd. Sec. 1, Ch. 342, L. 1973; R.C.M. 1947, 14-203(part).

Cross-References

Stockholders' meetings, 35-15-302.

35-15-204. Issuance of certificate of organization — effect. (1) The commissioners shall make a full report of their proceedings, including therein a copy of the notice provided for in the preceding section, a copy of the subscription list, a copy of the bylaws adopted by the association, and the names of the directors elected and their respective terms of office, which report shall be executed by at least a majority of the commissioners and shall be filed in the office of the secretary of state. The secretary of state shall thereupon issue a certificate of the complete organization of the association, making a part thereof a copy of all papers filed in his office in and about the organization and duly authenticated under his hand and seal of the state, for which he shall receive the sum of $20, and thereupon a certified copy of said certificate shall be filed in the office of the county clerk in which the principal office of the association is located.

(2) Upon the filing of said certified copy, the association shall be deemed to be fully organized and may proceed to business.

History: En. Sec. 873, Civ. C. 1895; re-en. Sec. 4213, Rev. C. 1907; re-en. Sec. 6378, R.C.M. 1921; re-en. Sec. 6378, R.C.M. 1935; amd. Sec. 3, Ch. 273, L. 1955; amd. Sec. 3, Ch. 117, L. 1961; R.C.M. 1947, 14-204(part); amd. Sec. 32, Ch. 174, L. 1983.

Cross-References

Issuance of certificate of incorporation for agricultural associations, 35-16-204.

Receipt of certificate of incorporation for cooperative agricultural marketing associations, 35-17-205.

Certificate of incorporation for cemetery associations, 35-20-103.

35-15-205. Amendment of articles of incorporation. At any time after the filing of the certificate of complete organization, the articles of incorporation may be amended. Any amendment of the articles of incorporation shall first be approved by two-thirds of the directors and then adopted by a vote of not less than two-thirds of those stockholders voting thereon at any regular meeting of the stockholders or at a special meeting of the stockholders called for that purpose. A certificate setting forth such amendment shall be executed on behalf of the association by its president or vice-president and its corporate seal affixed thereto and attested by its secretary. Such certificate shall be filed in the office of the secretary of state who shall thereupon issue a certificate of amendment of the articles of incorporation, for which he shall receive the sum of $10, and thereupon a certified copy of such certificate shall be filed in the office of the county clerk in which the principal office of the association is located.

History: En. Sec. 873, Civ. C. 1895; re-en. Sec. 4213, Rev. C. 1907; re-en. Sec. 6378, R.C.M. 1921; re-en. Sec. 6378, R.C.M. 1935; amd. Sec. 3, Ch. 273, L. 1955; amd. Sec. 3, Ch. 117, L. 1961; R.C.M. 1947, 14-204(part); amd. Sec. 33, Ch. 174, L. 1983.

Cross-References

Amendments of articles of incorporation of cooperative agricultural marketing associations, 35-17-203.

Amendments of articles of incorporation of rural cooperative utilities, 35-18-204, 35-18-501.

35-15-206. Bylaws. All bylaws shall be adopted by the stockholders of the association and may be amended at a meeting of the stockholders by a majority of those stockholders voting thereon or as otherwise provided in the bylaws. Amendments of the bylaws shall be fully effective upon adoption as provided herein and need not be filed in the office of the secretary of state or county clerk.

History: En. Sec. 875, Civ. C. 1895; re-en. Sec. 4215, Rev. C. 1907; re-en. Sec. 6380, R.C.M. 1921; re-en. Sec. 6380, R.C.M. 1935; amd. Sec. 4, Ch. 273, L. 1955; R.C.M. 1947, 14-206(part).

35-15-207 through 35-15-210 reserved.

35-15-211. Filing of a facsimile copy. (1) The secretary of state may treat a facsimile copy of a document that is required to be filed under this chapter and the signatures on the facsimile copy in the same manner as an original for purposes of this chapter, provided that he receives the original document within 5 working days of the receipt of the facsimile copy. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy. A facsimile copy may be filed under this section if it:

(a) is produced by a method of transmission of images in which the image is scanned at the transmitter, reconstructed at the receiving station, and duplicated on paper at the receiving station; and

(b) is legible and the same size as the original.

(2) During the 5-day period referred to in subsection (1), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.

(3) If the original document is not received within 5 working days of receipt of the facsimile copy as provided in subsection (1), the filing of the facsimile copy is void.

(4) A person who files a false document by facsimile copy is liable to the party aggrieved for three times the amount of damages resulting from the filing of the false document.

History: **En. Sec. 4, Ch. 273, L. 1989.**

Part 3

Shareholders, Directors, and Officers

Part Cross-References

Directors and officers of business corporations, Title 35, ch. 1, part 4.

Directors and officers of nonprofit corporations, Title 35, ch. 2, part 4.

Members and directors of agricultural associations, Title 35, ch. 16, part 3.

Members, directors, and officers of cooperative agricultural marketing associations, Title 35, ch. 17, part 3.

Members, trustees, and officers of rural cooperative utilities, Title 35, ch. 18, part 3.

Trustees of cemetery associations, Title 35, ch. 20, part 2.

Governing board of mausoleum and columbarium associations, 35-21-205.

35-15-301. Increase of membership. An association licensed to operate under this chapter may, by a majority of its stockholders, increase its membership in such manner as may be provided in its bylaws, not inconsistent with any of the provisions of this chapter.

History: **En. Sec. 879, Civ. C. 1895; re-en. Sec. 4219, Rev. C. 1907; re-en. Sec. 6384, R.C.M. 1921; re-en. Sec. 6384, R.C.M. 1935; R.C.M. 1947, 14-210.**

35-15-302. Stockholders' meetings — place — time — call — notice — quorum. (1) Unless the bylaws provide otherwise, stockholders' meetings shall be held at the principal office or such other place as the board may determine.

(2) An annual stockholders' meeting shall be held at the time fixed in or pursuant to the bylaws. In the absence of a bylaw provision, such meeting

shall be held within 6 months after the close of the fiscal year at the call of the president or board.

(3) Special stockholders' meetings may be called by the president, board, or stockholders having one-fifth of the votes entitled to be cast at such meeting.

(4) Written notice stating the place, day, and hour, and in case of a special stockholders' meeting the purposes for which the meeting is called, shall be given not less than 7 or more than 30 days before the meeting at the direction of the person calling the meeting.

(5) At any meeting at which stockholders are to be represented by delegates, notice to such stockholders may be given by notifying such delegates and their alternates. Notice may consist of a notice to all stockholders or may be in the form of an announcement at the meeting at which such delegates or alternates are elected.

(6) A quorum at a regular or special meeting shall be as provided in the association's articles or bylaws. If the articles or bylaws do not define a quorum, 10% of the first 100 stockholders plus 5% of any additional stockholders present in person shall constitute a quorum. Stockholders represented by signed vote may be counted in computing a quorum only on those questions as to which the signed vote is taken.

History: En. Sec. 872, Civ. C. 1895; re-en. Sec. 4212, Rev. C. 1907; re-en. Sec. 6377, R.C.M. 1921; re-en. Sec. 6377, R.C.M. 1935; amd. Sec. 2, Ch. 273, L. 1955; amd. Sec. 1, Ch. 342, L. 1973; R.C.M. 1947, 14-203(2).

Cross-References

First meeting of subscribers, 35-15-203.

Assignment of stock, 35-15-403.

35-15-303. Stockholder voting by mail. At any regularly called general or special meeting of the stockholders of cooperative associations, a written vote received by mail from any absent stockholder and signed by him may be read in such meeting and shall be equivalent to a vote of each of the stockholders so signing, provided he has been previously notified in writing of the exact motion or resolution upon which such vote is taken and a copy of the same is forwarded with and attached to the vote so mailed by him.

History: En. Sec. 1, Ch. 83, L. 1915; re-en. Sec. 6386, R.C.M. 1921; re-en. Sec. 6386, R.C.M. 1935; R.C.M. 1947, 14-212.

Cross-References

Assignment of stock, 35-15-403.

35-15-304. Directors and officers. (1) Directors of associations organized under this chapter shall be elected by the stockholders and hold their office for such period of time as shall be provided in the bylaws.

(2) The board of directors, who shall exercise the corporate powers invested in such association, shall consist of not less than three as fixed by the bylaws of the association.

(3) The officers of the association shall be a president, vice-president, secretary, and treasurer, and such others as may be designated by the bylaws to be elected by the stockholders or by the board of directors, as provided by the bylaws.

(4) Only stockholders shall be elected directors, and only directors shall be elected president or vice-president. The offices of secretary and treasurer may be combined and the combined office designated as secretary-treasurer.

(5) The bylaws may provide that the territory in which the association has stockholders shall be divided into districts and that the directors shall be elected according to such districts, in which case the bylaws may specify the number of directors to be elected by each district and the manner and method of reapportioning the directors and of redistricting the territory covered by the association. The bylaws may provide that primary elections be held in each district by the stockholders residing therein to elect the directors apportioned to such districts with the result of all such primary elections to be ratified by the stockholders at the next regular meeting of the association.

History: (1)En. Sec. 872, Civ. C. 1895; re-en. Sec. 4212, Rev. C. 1907; re-en. Sec. 6377, R.C.M. 1921; re-en. Sec. 6377, R.C.M. 1935; amd. Sec. 2, Ch. 273, L. 1955; amd. Sec. 1, Ch. 342, L. 1973; Sec. 14-203, R.C.M. 1947; (2) thru (5)En. Sec. 875, Civ. C. 1895; re-en. Sec. 4215, Rev. C. 1907; re-en. Sec. 6380, R.C.M. 1921; re-en. Sec. 6380, R.C.M. 1935; amd. Sec. 4, Ch. 273, L. 1955; Sec. 14-206, R.C.M. 1947; R.C.M. 1947, 14-203(part), 14-206(part).

35-15-305. Filing required to have benefit of certain provisions. All cooperative corporations, companies, or associations organized before March 5, 1915, and doing business under prior statutes or which have attempted to so organize and do business shall have the benefit of 35-15-303, 35-15-411, and 35-15-412 and be bound thereby on filing with the secretary of state a written declaration, executed by the president and secretary, to the effect that said cooperative company or association has by a majority vote of its stockholders decided to accept the benefits of and to be bound by such provisions.

History: En. Sec. 4, Ch. 83, L. 1915; re-en. Sec. 6389, R.C.M. 1921; re-en. Sec. 6389, R.C.M. 1935; R.C.M. 1947, 14-215(part); amd. Sec. 34, Ch. 174, L. 1983.

Part 4

Shares, Dividends, and Distributions

Part Cross-References

Shares of business corporations, Title 35, ch. 1, part 6.

Stockholder provisions of agricultural associations, Title 35, ch. 16, part 2.

Stock of cooperative agricultural marketing associations, 35-17-302.

Conversion of corporation shares into rural cooperative utility memberships, 35-18-206.

Power to issue stock for mausoleum and columbarium authorities, 35-21-202.

35-15-401. Classes of stock. (1) The shares of stock shall not be less than $10 or more than $5,000 per share and may be made payable in installments.

(2) Every cooperative association may divide its shares of stock into preferred and common stock. The holders of preferred stock shall have no voting power and shall not participate in the management and affairs of the association, and the owners thereof shall share in the profits of the association to the extent of not exceeding 6% per annum on the par value thereof. The common stock may be divided into classes of different values, and the owners thereof shall share in the profits of the association in proportion to the par value of their shares. However, the owners of common stock in the different classes shall have the same power and vote in the association.

(3) The stock heretofore issued in classes of different par values by any cooperative association is hereby legalized and made valid.

History: En. Sec. 876, Civ. C. 1895; re-en. Sec. 4216, Rev. C. 1907; amd. Sec. 1, Ch. 3, L. 1909; re-en. Sec. 6381, R.C.M. 1921; amd. Sec. 2, Ch. 135, L. 1933; re-en. Sec. 6381, R.C.M. 1935; R.C.M. 1947, 14-207(part).

35-15-402. Forfeiture of stock for nonpayment — reissuance. Forfeiture of the stock for nonpayment of installments may be provided for in the bylaws, and whenever a share of stock is forfeited, such share shall become the property of the association and may be reissued to any person already a holder of common stock; but any proceeds received by the association from such reissue, over and above the amount due on said share, shall be paid to the delinquent shareholder.

History: En. Sec. 876, Civ. C. 1895; re-en. Sec. 4216, Rev. C. 1907; amd. Sec. 1, Ch. 3, L. 1909; re-en. Sec. 6381, R.C.M. 1921; amd. Sec. 2, Ch. 135, L. 1933; re-en. Sec. 6381, R.C.M. 1935; R.C.M. 1947, 14-207(part).

35-15-403. Assignment of stock. No assignment of stock shall be made to any person who already owns stock, except by the consent of the board of directors, but stock may be assigned to the association at any time with the consent of the directors. On no question shall a stockholder have more than one vote. Every assignment of stock on which there remains any portion unpaid shall be recorded in the books of the association, and each stockholder shall be jointly and severally liable with the association for the debts of the association to the extent of the amount which shall be unpaid upon the share held by him. No assignor shall be released from any such indebtedness by reason of any assignment of his share but shall remain jointly liable therefor with the assignee.

History: En. Sec. 877, Civ. C. 1895; re-en. Sec. 4217, Rev. C. 1907; re-en. Sec. 6382, R.C.M. 1921; re-en. Sec. 6382, R.C.M. 1935; amd. Sec. 5, Ch. 273, L. 1955; R.C.M. 1947, 14-208.

Cross-References

Limit on subscription or control of common stock — one share per person, 35-15-202.

35-15-404. Share exempt from attachment and execution — sale upon death of member. (1) The share, not exceeding the par value of $500, of each member shall be exempt from seizure on attachment or sale under execution.

(2) Upon his death the share shall be sold by the association and the proceeds after deducting all liabilities to the association shall be delivered to his heirs.

History: En. Sec. 878, Civ. C. 1895; re-en. Sec. 4218, Rev. C. 1907; amd. Sec. 2, Ch. 3, L. 1909; re-en. Sec. 6383, R.C.M. 1921; re-en. Sec. 6383, R.C.M. 1935; R.C.M. 1947, 14-209.

Cross-References

Property exempt from execution, Title 25, ch. 13, part 6.

35-15-405 through 35-15-410 reserved.

35-15-411. Disposal of earnings — dividends — reserve fund — educational fund. The directors of a cooperative association, subject to revision by the stockholders at a general or special meeting, may apportion the earnings of the association by first paying dividends on the paid-up capital stock, not exceeding 6% per annum on the par value thereof; from the remaining funds, if any, accessible for dividend purposes, not less than 5% of the net profits for a reserve fund until an amount has accumulated in said reserve fund amounting to 30% of the paid-up capital stock; and from the balance, if any, 5% for an educational fund to be used for teaching cooperation; and the remaining of said profits, if any, by uniform dividends upon the amount of purchases of patrons and upon the wages and for salaries of employees, the amount of such uniform dividends on the amount of their purchases, which may be credited to the account of such patrons on account of capital stock of the association; but in production associations such as creameries, canneries, elevators, factories, and the like, dividends shall be on raw material delivered instead of on goods purchased. In case the association is both a selling and a productive concern, the dividends may be on both raw material delivered and on goods purchased by patrons.

History: En. Sec. 2, Ch. 83, L. 1915; re-en. Sec. 6387, R.C.M. 1921; amd. Sec. 3, Ch. 135, L. 1933; re-en. Sec. 6387, R.C.M. 1935; R.C.M. 1947, 14-213.

Cross-References

Filing required to have benefit of certain provisions, 35-15-305.

35-15-412. When distribution of profits and earnings to be made — dissolution for failure to pay dividend for five years. (1) The profits or net earnings of such associations shall be distributed to those entitled thereto at such times as the bylaws shall prescribe, which shall be as often as once in 12 months.

(2) If such associations for 5 consecutive years shall fail to declare a dividend upon the shares of its paid-up capital, the holders of the majority of the par value of the issued and outstanding capital stock, by petition setting forth such fact, may apply to the district court of the county wherein is situated its principal place of business in this state for its dissolution. If upon hearing the allegations of the petition are found to be true, the court may adjudge a dissolution of the association.

History: En. Sec. 3, Ch. 83, L. 1915; re-en. Sec. 6388, R.C.M. 1921; re-en. Sec. 6388, R.C.M. 1935; R.C.M. 1947, 14-214.

Cross-References

Filing required to have benefit of certain provisions, 35-15-305.

Part 5

Merger, Consolidation, and Sale of Assets

35-15-501. Merger or consolidation authorized. It shall be lawful for two or more cooperative associations formed or which may be hereafter formed under the laws of the state of Montana to merge or consolidate with each other or with one or more associations incorporated under the laws of another state or states relating to organization of cooperative associations by complying with the provisions of this chapter or with the applicable laws of the state where the surviving or new association has its principal place of business.

History: En. Sec. 1, Ch. 140, L. 1917; re-en. Sec. 6390, R.C.M. 1921; re-en. Sec. 6390, R.C.M. 1935; amd. Sec. 2, Ch. 342, L. 1973; R.C.M. 1947, 14-216(part).

35-15-502. Plan for merger or consolidation. Before an association may merge or consolidate with any other association, a written plan of merger or consolidation shall be prepared by the board of directors of one or both associations, by a committee appointed for that purpose by the board of directors of one or both associations, or by a committee composed of at least 10% of the stockholders of one of the associations concerned. Such plan shall set forth all the terms of the merger or consolidation and the proposed effect thereof on each of the stockholders of the associations concerned. In the case of consolidation, the plan shall also contain a copy of the proposed articles for the new association to be formed.

History: En. Sec. 1, Ch. 140, L. 1917; re-en. Sec. 6390, R.C.M. 1921; re-en. Sec. 6390, R.C.M. 1935; amd. Sec. 2, Ch. 342, L. 1973; R.C.M. 1947, 14-216(1).

35-15-503. Meeting to consider plan — notice. (1) Notice of the proposed plan and, in the case of consolidation, of the proposed new articles shall be mailed to each stockholder of the associations to be affected thereby.

(2) The notice shall advise the stockholders of each association of the time and place each association shall meet, at which time the proposal shall be considered and voted upon by each association. The meetings shall be held not less than 30 or more than 60 days after the mailing of notice. The plan shall be considered adopted if a quorum is present and two-thirds of those voting vote in its favor.

History: En. Sec. 1, Ch. 140, L. 1917; re-en. Sec. 6390, R.C.M. 1921; re-en. Sec. 6390, R.C.M. 1935; amd. Sec. 2, Ch. 342, L. 1973; R.C.M. 1947, 14-216(2), (3).

35-15-504. Filing of documents of merger or consolidation — effective date. (1) Within 30 days after the merger or consolidation plan has been adopted, documents of merger or consolidation setting forth the plan and the manner of adoption thereof shall be signed by the president or vice-president and by the secretary or assistant secretary of each association merging or consolidating and filed with the clerk and recorder of the county in which the principal office of the new or surviving association is located if the office is in Montana and with the Montana secretary of state.

(2) If the new or surviving association has its principal office in Montana, the merger or consolidation shall become effective as of the date of filing with the Montana secretary of state. If its principal office is outside the state of Montana, the merger or consolidation shall become effective upon full compliance with the laws of the state in which its principal office is located. If there is a merger, the articles and bylaws of the surviving association are amended to the extent provided in the documents setting forth the plan of merger.

History: En. Sec. 1, Ch. 140, L. 1917; re-en. Sec. 6390, R.C.M. 1921; re-en. Sec. 6390, R.C.M. 1935; amd. Sec. 2, Ch. 342, L. 1973; R.C.M. 1947, 14-216(4); amd. Sec. 35, Ch. 174, L. 1983.

35-15-505. Effect of merger or consolidation — rights and obligations — rights of creditors not impaired. (1) After the effective date, the associations which are parties to the plan become a single association. In the case of a merger, the surviving association is that association so designated in the plan. In the case of a consolidation, the new association is the association provided for in the plan. The separate existence of all associations which are parties to the plan, except the surviving or new association, then ceases.

(2) The surviving or new association possesses all the rights and all the property of each of the individual associations and is responsible for all their obligations. Title to any property is vested in the surviving or new association with no reversion or impairment thereof caused by the merger or consolidation. No right of any creditor may be impaired by the merger or consolidation without his consent.

(3) Nothing in this part shall be construed to impair the obligation of any contract to which any of such constituents was a party at the date of said consolidation.

History: (1), (2)En. Sec. 1, Ch. 140, L. 1917; re-en. Sec. 6390, R.C.M. 1921; re-en. Sec. 6390, R.C.M. 1935; amd. Sec. 2, Ch. 342, L. 1973; Sec. 14-216, R.C.M. 1947; (3)En. Sec. 4, Ch. 140, L. 1917; re-en. Sec. 6393, R.C.M. 1921; re-en. Sec. 6393, R.C.M. 1935; Sec. 14-219, R.C.M. 1947; R.C.M. 1947, 14-216(6), 14-219.

35-15-506. Sale or disposition of assets. At any meeting the stockholders of a cooperative association may authorize the disposition or sale of all or substantially all of the association's assets if notice that such disposition or sale will be considered at such meeting has been given to all persons entitled to vote thereon and if disposition or sale is approved by two-thirds of those entitled to vote thereon voting at the meeting.

History: En. Sec. 1, Ch. 140, L. 1917; re-en. Sec. 6390, R.C.M. 1921; re-en. Sec. 6390, R.C.M. 1935; amd. Sec. 2, Ch. 342, L. 1973; R.C.M. 1947, 14-216(5).

Cross-References

Dissolution and liquidation of business corporations, Title 35, ch. 1, part 9.

Dissolution and liquidation of nonprofit corporations, Title 35, ch. 2, part 7.

Involuntary corporate dissolution, Title 35, ch. 6.

Dissolution and winding up of partnerships in general, Title 35, ch. 10, part 6.

Dissolution of limited partnerships, Title 35, ch. 12, part 12.

Sale or disposition of assets of cooperative agricultural marketing associations, 35-17-506.

Dissolution of rural cooperative utilities, 35-18-404, 35-18-405.

35-15-507. Statute of limitations. No action may be maintained to invalidate any sale, merger, or consolidation taken pursuant to this chapter because of the manner of its adoption unless the action is commenced within 2 years after the date of filing same.

History: En. Sec. 1, Ch. 140, L. 1917; re-en. Sec. 6390, R.C.M. 1921; re-en. Sec. 6390, R.C.M. 1935; amd. Sec. 2, Ch. 342, L. 1973; R.C.M. 1947, 14-216(7).

CHAPTER 16

AGRICULTURAL ASSOCIATIONS

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35-16-403. Petition to district court for creation of debt.
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35-16-405. Execution and record of mortgage — lien.
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Chapter Cross-References

Unfair trade practices, 30-14-214, 30-14-216, 30-14-224.

Cooperative associations, Title 35, ch. 15.

Cooperative agricultural marketing associations, Title 35, ch. 17.

Conservation districts, Title 76, ch. 15.

Part 1

General

35-16-101. Applicability of general corporate law. Except as otherwise herein specifically provided, corporations or districts organized under the provisions hereof shall be governed and controlled by the laws relative to corporations generally.

History: En. Sec. 12, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6425, R.C.M. 1921; re-en. Sec. 6425, R.C.M. 1935; R.C.M. 1947, 14-329.

Cross-References

General corporate law — applicability, 35-1-103.

Montana Nonprofit Corporation Act — applicability, 35-2-103.

35-16-102. Errors in land description or names not to affect proceedings or jurisdiction of court. Mere error or omission in the description of any lands or in the names of any of the holders of title or evidence of title to lands shall not operate to render invalid any proceedings hereunder or to deprive the district court of the subject matter unless such error or omission shall cause substantial injury.

History: En. Sec. 10, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6423, R.C.M. 1921; re-en. Sec. 6423, R.C.M. 1935; R.C.M. 1947, 14-327.

35-16-103. Order of district court final — appeal. Whenever under the provisions hereof any application is permitted to be made to the district court or appeal allowed thereto, the action of the district court upon such application or appeal shall be final unless appealed from in accordance with Title 25 within 60 days from and after the date of the entry of the order or judgment.

History: En. Sec. 11, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6424, R.C.M. 1921; re-en. Sec. 6424, R.C.M. 1935; R.C.M. 1947, 14-328.

Part 2

Formation

Part Cross-References

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.

Shares of business corporations, Title 35, ch. 1, part 6.

Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.

Formation of religious corporations sole, Title 35, ch. 3, part 2.

Organization of professional service corporations, Title 35, ch. 4, part 2.

Formation and operation of business trusts, Title 35, ch. 5, part 2.

Formation of limited partnerships, Title 35, ch. 12, part 6.

Formation of mining partnerships, Title 35, ch. 13, part 1.

Formation, articles of incorporation, and bylaws of cooperative associations, Title 35, ch. 15, part 2.

Shares of cooperative associations, Title 35, ch. 15, part 4.

Formation of cooperative agricultural marketing associations, Title 35, ch. 17, part 2.

Stock of cooperative agricultural marketing associations, 35-17-302.

Formation, articles, and bylaws of rural cooperative utilities, Title 35, ch. 18, part 2.

Conversion of corporation shares into rural cooperative utility memberships, 35-18-206.

Formation of cemetery associations, Title 35, ch. 20, part 1.

Organization of mausoleum and columbarium authorities, Title 35, ch. 21, part 2.

Power to issue stock for mausoleum and columbarium authorities, 35-21-202.

35-16-201. Who may incorporate — purposes of incorporation. At any time after March 5, 1921, any 10 or more holders of title or evidence of title to agricultural, horticultural, or farm lands in this state of an aggregate value of not less than $75,000 who may desire to form a company or district for the purpose of promoting or improving the production, processing, storing, warehousing, or marketing of any or all agricultural, horticultural, or farm or dairying products of the respective petitioners therefor may incorporate themselves into an agricultural corporation or cooperative agricultural district.

History: En. Sec. 1, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6397, R.C.M. 1921; re-en. Sec. 6397, R.C.M. 1935; R.C.M. 1947, 14-301.

35-16-202. Petition for incorporation — contents and filing — bond. (1) Such persons must prepare, sign, acknowledge, and file a petition with the clerk of the district court of the county in which the lands or the greater portion of the lands included in the petition are situate, such petition to state:

(a) the name of the corporation or district proposed to be formed;

(b) the purpose for which it is formed; .

(c) the place where its principal business is to be transacted;

(d) the number of its directors or trustees, which shall not be less than three, and the names and residences of those who are selected for the first 3 months and until their successors are elected and qualified. Such directors or trustees shall at all times be resident freeholders in the state of Montana.

(e) the names and addresses of the petitioners applying for such incorporation or district, with a description of the lands which each owns and proposed to be submitted to said corporation or district and the character of the same and their production, also a consent of the owners to submit the lands to the provisions hereof;

(f) the assessed valuation of the land;

(g) the term for which it is to exist, not exceeding 40 years;

(h) if shares, acres, production, or other evidences of membership are to be used, the basis for issuing the same in either value, acreage, or production.

(2) In addition to provisions required in subsection (1), the petition for incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-202(2)(a)(v).

(3) Such petition shall be accompanied by a map giving location of the lands sought to be included in such corporation or district, nothing herein to be construed as requiring such lands to be contiguous.

(4) A bond in the sum of $1,000 to be approved by the clerk, conditioned for the payment of all costs incurred in the creation of such corporation or district, shall be filed with the petition.

History: En. Sec. 2, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6398, R.C.M. 1921; re-en. Sec. 6398, R.C.M. 1935; R.C.M. 1947, 14-302; amd. Sec. 4, Ch. 559, L. 1987.

Cross-References

Application of Montana Rules of Civil Procedure to proceeding for incorporation, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

Directors — number — powers, 35-16-315.

35-16-203. Notice of hearing of petition. Upon the filing of such petition, the clerk of the district court wherein the same shall be filed shall set the same for hearing before said court at a time not less than 10 or more than 20 days from the date of filing such petition and shall cause notice of such setting to be mailed or delivered to each of the persons purporting to be signers thereon not less than 10 days before such hearing and post it in three public places in said county.

History: En. Sec. 3, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6399, R.C.M. 1921; re-en. Sec. 6399, R.C.M. 1935; R.C.M. 1947, 14-303.

35-16-204. Hearing of petition — findings of court — issuance of certificate of incorporation — effect of issuance. (1) At the time specified in the notice of hearing, a district judge of the state of Montana shall in open court hear said petition and the evidence offered in support thereof and determine whether or not the requirements of this chapter have been complied with. If upon such hearing or adjournments thereof as the court may order, the court does find that the petition substantially complies with the requirements of this chapter and is true in all particulars, the court shall so find and in open court shall enter upon its minutes and upon said petition or attach thereto its findings and order to the effect that said petition complies with the requirements of this chapter and is true and correct in all particulars as therein set forth and its statements are supported by proper proof and that such corporation or district is entitled to be created and become a body corporate.

(2) A duly certified copy of which petition, with the court's order or any endorsements thereon, shall be filed with the secretary of state of the state of Montana who shall upon such filing issue a certificate of incorporation under the seal of the state of Montana. Duly certified copies of the petition, with the court's order or endorsements thereon, shall also be filed with the county clerk and recorder of each county in which said corporation or district shall thereafter own or hold property or have property-holding memberships.

(3) Upon the issuance of such certificate, every corporation or district organized hereunder is a quasi-public corporation for the promotion of public welfare, with all of the powers and authority of bodies corporate under the corporation laws of the state of Montana.

History: En. Sec. 4, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6400, R.C.M. 1921; re-en. Sec. 6400, R.C.M. 1935; R.C.M. 1947, 14-304.

Cross-References

General powers of business corporations, 35-1-108.

General powers of nonprofit corporations, 35-2-107.

Issuance of certificate of organization for cooperative associations, 35-15-204.

Receipt of certificate of incorporation for cooperative agricultural marketing associations, 35-17-205.

Certificate of incorporation for cemetery associations, 35-20-103.

35-16-205. First meeting — notice. Within 30 days after the issuance of a certificate of incorporation, the persons named and designated in the petition to be directors or trustees for the first 3 months shall cause a written notice to be mailed or delivered to each and every signer of the petition of a proposed first meeting of said corporation or district for the purpose of adopting a common seal, adopting bylaws, and providing for the issuance of stock or other evidences of membership of the members thereof and for the transaction of such other business as may properly come before a meeting of the stockholders or members of a corporation or district formed for the purposes named in the petition.

History: En. Sec. 5, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6401, R.C.M. 1921; re-en. Sec. 6401, R.C.M. 1935; R.C.M. 1947, 14-305.

35-16-206. Bylaws to be adopted at first meeting. Every corporation or district formed under this chapter must, by majority action at its organization meeting after incorporation, adopt a code of bylaws for its government, not inconsistent with the constitution and laws of this state.

History: En. Sec. 1, Art. 2, Ch. 152, L. 1921; re-en. Sec. 6406, R.C.M. 1921; re-en. Sec. 6406, R.C.M. 1935; R.C.M. 1947, 14-310.

35-16-207. Bylaws — contents. The bylaws, where no other provision is specially made, may provide for:

(1) the time, place, and manner of calling and conducting meetings of stockholders or members;

(2) the number of stockholders or members or quantity of units of membership in acres, lands, or production, as shall constitute a quorum;

(3) the mode of voting at stockholder's meetings and the method of voting by proxy, provided that the same shall not be inconsistent with any of the provisions hereof or the laws of this state;

(4) the number of directors of the corporation or district and the time of the annual election of directors and the mode and manner of giving notice thereof;

(5) the officers, the manner of their election, their duties, and tenure;

(6) the directors having the power to sell, lease, mortgage, hypothecate, or otherwise dispose of the corporate assets of the corporation or district or any part thereof, as distinguished from membership lands;

(7) the manner of creating subdivisions or subdistricts, by geographical location or otherwise, for local groups or subdivisions of the corporation or district, as may promote the objects of the corporation or district generally or the welfare of the membership in the particular subdivision or subdistrict; and may provide for local boards of directors or executive committees representing the board of directors to manage the affairs of the subdivision or subdistrict thus created, subject to the direction and approval of the board of directors of the corporation or district.

History: En. Sec. 2, Art. 2, Ch. 152, L. 1921; re-en. Sec. 6407, R.C.M. 1921; re-en. Sec. 6407, R.C.M. 1935; R.C.M. 1947, 14-311.

35-16-208. Bylaws — recording and amendment. (1) The bylaws and all amendments and additions thereto shall be recorded.

(2) The bylaws may be repealed or amended or new bylaws may be adopted at the annual meeting or at any other meeting of the members called for that purpose by the directors, by a vote representing two-thirds of the stock or other evidences of membership or by two-thirds of the members. The written assent of the holders of two-thirds of the stock or other evidences of membership or of two-thirds of the members is effective to repeal or amend a bylaw or to adopt additional bylaws. The power to repeal and amend the bylaws and to adopt new bylaws may, by a similar vote at any such meeting or by similar written assent, be delegated to the board of directors or trustees. That power, when delegated, may be revoked by a similar vote at any such meeting of the members.

History: En. Sec. 3, Art. 2, Ch. 152, L. 1921; re-en. Sec. 6408, R.C.M. 1921; re-en. Sec. 6408, R.C.M. 1935; amd. Sec. 8, Ch. 62, L. 1977; R.C.M. 1947, 14-312.

Cross-References

Directors — number — powers, 35-16-315.

35-16-209. Creation of subdivisions or subdistricts. Any corporation or district organized under the provisions hereof shall have the power to create subdivisions or subdistricts of said corporation or district, by geographical or other location, as shall best subserve the purposes of the corporation or district or the welfare of the membership of the corporation or district residing in the proposed subdivision or subdistrict, provided any property owned or acquired by the subdivision or subdistrict thus created shall at all times be the property of the corporation or district and its members and membership lands subject to the objects, purposes, and liabilities of the corporation or district, as herein provided.

History: En. Sec. 8, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6404, R.C.M. 1921; re-en. Sec. 6404, R.C.M. 1935; R.C.M. 1947, 14-308.

35-16-210. Existing associations — reorganization under this chapter. (1) Any cooperative or other corporation, association, society, or group of individuals on or before March 5, 1921, associated together for purposes and objects similar to those contemplated by the provisions hereof desiring to come within the provisions hereof may, by resolution of their board of directors, direct written notice to be given to each stockholder or member of their corporation or group of individuals of the proposal to organize a corporation or district under the provisions hereof and request 10 or more of their members qualified as herein provided for to prepare and file, in such county as they shall select to make their principal place of business, a petition in accordance with the provisions of 35-16-202. If thereafter not less than two-thirds of the stockholders or members as such of such cooperative or other corporation, association, society, or group of individuals shall either file with the corporation or district their written consent to such reorganization or petition to become members thereof, in accordance with the provisions hereof, or both, the board of directors or other governing board of such existing cooperative or other corporation, association, society, or group of individuals shall be authorized to through proper officers transfer to such new corporation or district, when organized, their corporate assets, real, personal, and mixed.

(2) Any stockholder or member of any cooperative or other corporation or society reorganized under the provisions hereof, consenting to such reorganization but not including lands therein, shall be entitled to a certificate or shares of stock or other evidence of membership in such reorganized corporation or district of the par value equal to the value of his certificate or shares of stock or membership right in the previous existing cooperative or other corporation or society's assets at the time of such reorganization and shall be to this extent a stockholder or member; provided any stockholder or member of the corporation or group of individuals that are reorganizing shall not be considered as increasing the stock of the new corporation so as to require consent of a majority of its members or stockholders to their admission.

History: En. Sec. 8, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6421, R.C.M. 1921; re-en. Sec. 6421, R.C.M. 1935; R.C.M. 1947, 14-325.

Cross-References

Objection to notice of hearing of petition for creation of debt, 35-16-404.

35-16-211. Stockholders dissenting from reorganization of existing association — appraisal remedy. In the event any stockholder or member of such existing cooperative or other corporation, association, society, or group of individuals shall decline to consent to such transfer or refuse to become a member of such new organization, he must, within 30 days from and after receiving written notice of the transfer of said assets to the new corporation or district, serve upon the officers of the newly created corporation or district and file in the district court of the county of its principal place of business his petition praying for the net value of his equity as a stockholder or member in said cooperative or other corporation, association, society, or group of individuals in its assets, determined and valued as of the date when the said property was transferred by the directors or executive officers to the new corporation or district. Upon a failure to, within the time and in the manner specified herein, file such claim for appraisal and settlement, it shall be forever barred.

History: **En. Sec. 9, Art. 3, Ch. 152. L. 1921; re-en. Sec. 6422, R.C.M. 1921; re-en. Sec. 6422, R.C.M. 1935; R.C.M. 1947, 14-326.**

35-16-212. Association operating two or more enterprises in different parts of state — control by delegates. (1) Any, either cooperative stock or nonprofit nonstock, agricultural association or company existing on July 1, 1921, or thereafter organized under the laws of Montana may own and operate two or more cooperative enterprises in different parts of the state and may exercise and possess the following powers by providing in their articles of incorporation or in their bylaws that:

(a) all powers of the association members or stockholders shall be exercised by duly elected delegates at any meeting of such delegates which may be called. They shall elect such officers and transact such business in the same manner as the association members or stockholders are empowered to do. Such officers and board of directors as the delegates may elect shall be known as "general officers" or "general board of directors".

(b) stockholders or members of such cooperative stock or nonprofit nonstock agricultural associations or companies shall be grouped into locals in such districts as the general board of directors may from time to time direct;

(c) each local, with territorial limits as determined by the general board of directors, shall elect from among its stockholders or members one delegate and one alternate to represent the local at any meeting of the association or company. Such delegate and alternate shall serve for 1 year. The alternate shall serve as delegate at all meetings where the delegate may not be in attendance.

(d) each delegate may have only one vote, regardless of the number of stockholders or members which he represents.

(2) Nothing in this section limits the powers of the board of directors of any corporation.

History: **En. Sec. 1, Ch. 93, L. 1921; re-en. Sec. 6426, R.C.M. 1921; re-en. Sec. 6426, R.C.M. 1935; R.C.M. 1947, 14-330; amd. Sec. 11, Ch. 202, L. 1979.**

Cross-References
Voting proxies, 35-16-311.
Elections, 35-16-312, 35-16-313.

Part 3

Members and Directors

Part Cross-References

Directors and officers of business corporations, Title 35, ch. 1, part 4.

Directors and officers of nonprofit corporations, Title 35, ch. 2, part 4.

Shareholders, directors, and officers of cooperative associations, Title 35, ch. 15, part 3.

Members, directors, and officers of cooperative agricultural marketing associations, Title 35, ch. 17, part 3.

Members, trustees, and officers of rural cooperative utilities, Title 35, ch. 18, part 3.

Trustees of cemetery associations, Title 35, ch. 20, part 2.

Governing board of mausoleum and columbarium associations, 35-21-205.

35-16-301. Members and membership lands. The members of a corporation or district organized hereunder shall be called "members". The lands included by such members shall be called "membership lands".

History: **En. Sec. 9, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6405, R.C.M. 1921; re-en. Sec. 6405, R.C.M. 1935; R.C.M. 1947, 14-309.**

Cross-References

Corporate indebtedness as lien upon membership lands, 35-16-401.

35-16-302. Procedure for receiving other members. (1) Whenever any corporation or district has been formed under the provisions hereof, it is authorized and directed to permit other holders of title or evidence of title of similar or like agricultural, horticultural, or farm lands within this state to become members thereof, upon such holder of title or evidence of title, in manner and form as may be required by the laws of Montana and the rules of such corporation or district or its bylaws, applying for membership therein to the officers thereof by written application, duly acknowledged:

(a) containing a full, true, and correct description of the lands owned by him and proposed to be contained in said corporation or district;

(b) containing a statement of his desire to become a member thereof and his consent to submit his lands to the provisions hereof and to the administration of said corporation or district and its bylaws and to its objects and purposes; and

(c) accompanied by a map of the lands so owned by him and proposed to be submitted to said corporation or district, its objects and purposes.

(2) If said application shall be in proper form and the applicant be the holder of title or evidence of title to the lands described and the uses of said land as represented in said petition be similar to the uses of lands already included in said corporation or district, a full, true, and correct copy of his application shall be made and filed in the office of principal place of business of the corporation or district and his original application shall be filed and recorded in the office of the county clerk and recorder of the county in which the lands or the greater portion thereof is situate. He shall thereupon be entitled to evidence of temporary membership, in shares or units of membership, in similar manner as original members thereof and the lands described in the petition shall thereafter be construed to be a part of said corporation or district to all intents and purposes as though originally incorporated therein. Upon the consent of a majority of the members or stockholders given in the annual meeting or at a special meeting called as provided by law for that purpose, such new member or stockholder shall be entitled to full membership in such corporation or district.

History: **En. Sec. 6, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6402, R.C.M. 1921; re-en. Sec. 6402, R.C.M. 1935; R.C.M. 1947, 14-306.**

35-16-303. Withdrawal of membership lands — procedure. Any person holding title or evidence of title to membership lands included in a corporation or district organized under the provisions hereof subsequently desiring to withdraw his lands from such corporation or district may do so upon presenting to the board of directors his verified petition stating that he is the holder of title or evidence of title to membership lands included therein, particularly describing the same with a map or plat thereof, that he is desirous of withdrawing from such corporation or district, and tendering to said board the pro rata amount of liability of his lands for all of the corporation's lawfully created and existing lien liabilities together with his pro rata amount of interest due and to become due upon any such liabilities to the maturity of the same. If the matters and things set forth in said petition shall be true and said petitioner shall deposit with the board his pro rata amount of the liabilities as before herein set out or furnish a receipt for such amount from the mortgage or lien holders holding liens against such lands, the proper officers of the corporation or district shall make, execute, acknowledge, and deliver a release of said lands from incorporation or district and its liabilities. Upon presentation of such release to the mortgage or lien holder claiming a right against said membership lands, they shall furnish their release thereof, which said release or releases may be filed and recorded in any county or counties in which said lands may be situated. The board of directors and corporate assets of the corporation shall be responsible to any mortgage or lien holder and the withdrawee for the payments of such funds on their debt or liability.

History: En. Sec. 6, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6419, R.C.M. 1921; re-en. Sec. 6419, R.C.M. 1935; R.C.M. 1947, 14-323.

35-16-304. Withdrawal — application to court for order. In the event the board of directors shall refuse or fail for a period of 30 days to act upon such petition of withdrawal, the petitioner shall be entitled to apply to the district court in the county wherein said lands or the larger proportion of the same shall be situated for an order of withdrawal, and upon his payment to the clerk of the court for the use and benefit of the holders of mortgages or other liens against said corporation or its membership lands of the pro rata amount of his land's liabilities therefor, he shall be entitled to an order of withdrawal and release of his lands from said court. The filing with the clerk and recorder of a duly certified copy of such order permitting withdrawal shall operate to release the membership lands described therein from any liens of the corporation under the provisions hereof.

History: En. Sec. 7, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6420, R.C.M. 1921; re-en. Sec. 6420, R.C.M. 1935; R.C.M. 1947, 14-324.

35-16-305 through 35-16-310 reserved.

35-16-311. Meetings — voting — proxies. At the organization meeting or any meeting of the stockholders or members of a corporation or district organized under the provisions hereof, each member and each unit of membership in acres, production, or other evidence of membership shall be entitled to vote in person or by proxy. Corporate action at such meeting shall be determined by a majority of the membership and a majority of the acres, production, or units of membership, as may have been adopted. Any group of members of a subdivision or subdistrict of the corporation or district as may be defined and designated by the board of directors or bylaws shall, at a subdivision or subdistrict meeting called for the purpose, elect a delegate or proxy to represent all of the membership in the subdivision or subdistrict at any such meeting. Where any subdivision or subdistrict fails to elect such delegate, any individual member may give proxy, provided no person shall be entitled to act as proxy who is not himself a member of the corporation or district and a resident agricultural or horticultural freeholder in the state of Montana for not less than 3 years immediately preceding such meeting.

History: En. Sec. 8, Art. 2, Ch. 152, L. 1921; re-en. Sec. 6413, R.C.M. 1921; re-en. Sec. 6413, R.C.M. 1935; R.C.M. 1947, 14-317.

35-16-312. Directors — election — term. Directors must be elected at the annual meeting and may hold office for the term and in the manner as specified in the bylaws.

History: En. Sec. 6, Art. 2, Ch. 152, L. 1921; re-en. Sec. 6411, R.C.M. 1921; re-en. Sec. 6411, R.C.M. 1935; R.C.M. 1947, 14-315.

35-16-313. Elections — how conducted — voting. All elections must be by ballot and every stockholder or member or holder of a unit of membership in acres, production, or other evidence of membership shall have the right to vote in person or by a proxy in conformity with the provisions hereof, the constitution and laws of this state, and the bylaws of the corporation or district.

History: En. Sec. 7, Art. 2, Ch. 152, L. 1921; re-en. Sec. 6412, R.C.M. 1921; re-en. Sec. 6412, R.C.M. 1935; R.C.M. 1947, 14-316.

35-16-314. Qualifications of directors — quorum — vacancies. (1) No person shall be eligible to be a director of any corporation or district organized under the provisions hereof who is not himself a member of the corporation or district and a resident agricultural freeholder in the state of Montana.

(2) A quorum of the board of directors shall at all times be necessary for the transaction of business; provided, if the bylaws or board of directors shall provide for an executive committee, a quorum of such committee shall have authority to carry on business.

(3) Whenever a vacancy occurs in the office of a director, unless the bylaws shall otherwise provide, such vacancy may be filled by appointment by the board of directors.

History: En. Sec. 5, Art. 2, Ch. 152, L. 1921; re-en. Sec. 6410, R.C.M. 1921; re-en. Sec. 6410, R.C.M. 1935; R.C.M. 1947, 14-314.

35-16-315. Directors — number — powers. (1) The corporate or district powers, business, and property of all corporations or districts formed under the provisions hereof must be exercised, conducted, and controlled by a board, which shall never be less than three members. Otherwise, the number of members of the board may be increased or diminished at any time by proper amendment of the bylaws with reference thereto.

(2) The directors shall have the power to sell, lease, mortgage, hypothecate, or otherwise dispose of the corporate assets of the corporation or district, or any part thereof, as distinguished from membership lands.

History: En. Sec. 4, Art. 2, Ch. 152, L. 1921; re-en. Sec. 6409, R.C.M. 1921; re-en. Sec. 6409, R.C.M. 1935; R.C.M. 1947, 14-313.

Cross-References
Amendment of bylaws, 35-16-208.

35-16-316. Repealed. Sec. 12, Ch. 202, L. 1979.
History: En. Sec. 2, Ch. 93, L. 1921; re-en. Sec. 6427, R.C.M. 1921; re-en. Sec. 6427, R.C.M. 1935; R.C.M. 1947, 14-331.

Part 4

Corporate Indebtedness

Part Cross-References
Application of Montana Rules of Civil Procedure to proceeding for approval of indebtedness, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

35-16-401. Corporate indebtedness as lien upon membership lands. (1) After the date of the inclusion of any land or property as a member in any corporation or district organized under the provisions of this chapter, all mortgage or bonded indebtedness created by such corporation or district is a first lien upon the membership lands to an extent not to exceed 18% of the taxable value thereof if the land is grazing or agricultural and not to exceed 36% of the taxable value thereof if the land is horticultural or vegetable-producing.

(2) The recording of the copy of the articles of incorporation or petition to become a member of such corporation or district is notice to all subsequent lien claimants that the lands are subject to a first lien. However, nothing in this section may be construed as placing a limit upon the indebtedness that may be made a lien against any of the corporate or property assets of the corporation or district, as distinguished from membership lands individually owned.
History: En. Sec. 7, Art. 1, Ch. 152, L. 1921; re-en. Sec. 6403, R.C.M. 1921; re-en. Sec. 6403, R.C.M. 1935; amd. Sec. 33, Ch. 566, L. 1977; R.C.M. 1947, 14-307.

Cross-References
Petition for incorporation, 35-16-202.

35-16-402. Directors' resolution for creation of debt — contents. (1) The board of directors or other officers of a corporation or district organized under the provisions hereof as such shall have no power to incur any debt or liability which will be a lien upon its membership lands, except in accordance with the terms and provisions hereof.

(2) When at a meeting of the directors of any corporation or district organized hereunder, of which meeting each director shall have received at least 5 days' written or telegraphic prior notice, it shall be determined to the interests of said corporation or district for the promotion of its objects and business to create an indebtedness of said corporation or district secured by a first lien or mortgage upon all of the membership lands to the extent allowed under the provisions hereof, such meeting shall pass and spread at length upon their minutes a resolution specifying the purposes for which such debt is to be created, the amount thereof, the rate of interest to be paid thereon, the manner and form of evidencing the same, and any coupons for interest thereon and authorizing, directing, and empowering the executive

officers of the corporation or district to, upon the approval of the district court as hereinafter provided for, make, execute, and deliver bonds, notes, coupons, or other evidences of the debt and mortgages, deeds of trust, or other instruments of mortgage and hypothecation for security of the same.

History: En. Sec. 1, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6414, R.C.M. 1921; re-en. Sec. 6414, R.C.M. 1935; R.C.M. 1947, 14-318.

35-16-403. Petition to district court for creation of debt. Upon the passage of such resolution, the executive officers of the corporation or district shall prepare and file their verified petition in the district court of the county of principal place of business of such corporation or district, setting forth the fact of the passage of the resolution by the board of directors, the reason for the creation of such debt, and such other facts as may be necessary to fully advise the court with reference to such corporation or district, its aims and objects and the purposes for which said debt is to be created and the money expended, and praying for the approval of the court for the creation of such debt and the mortgage and hypothecation of its membership lands as security therefor.

History: En. Sec. 2, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6415, R.C.M. 1921; re-en. Sec. 6415, R.C.M. 1935; R.C.M. 1947, 14-319.

Cross-References

Application of Montana Rules of Civil Procedure to proceeding for approval of indebtedness, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

35-16-404. Notice of hearing of petition — hearing — order of court. (1) Upon presentation of such petition to the court, the court shall set the same for hearing at a time not less than 20 or more than 40 days from the date of filing thereof and direct personal notice to be given to such members as are within the state of Montana and by mail to such members without the state and by publication in some newspaper of general circulation in each of the counties in which membership lands to be affected are situated, for not less than 2 weeks prior to the hearing of said petition, which notice shall state:

(a) the name of the corporation or district;

(b) its principal place of business;

(c) the fact that it has applied to a district court (naming and describing the same) for leave to create a bonded indebtedness of the amount prayed for; and

(d) the maximum rate of interest proposed to be paid thereon and time of maturity.

(2) On the day set for the hearing of the petition, the court shall proceed to hear the same and any objections that may be filed to the granting hereof. If upon said hearing the court shall find that:

(a) notice has been given as required by this law and the orders of the court;

(b) the matters and things set forth in said petition are true;

(c) the objects and purposes for which the money is sought are within the legitimate objects and purposes for said corporation or district for the carrying on of its business and the board of directors have determined that such fund is proper or required for the carrying on of its business; and

(d) the provisions of this law have been complied with, the court shall sign and order filed, entered, and docketed its judgment and decree, including its findings on said hearing, describing the lands and authorizing, ordering, and directing the executive officers of such corporation or district to make, execute, and deliver notes, bonds, coupons, or other evidences of indebtedness of the total amount prayed for in the petition and the maximum interest to be permitted and make, execute, sign, and deliver mortgage or deed of trust or instrument of hypothecation covering the real property of the corporation or district and all of the membership lands in said corporation or district; said judgment to specify that for the payment of said debt and the interest thereon, as authorized, recourse shall first be had to the real property of said corporation or district, separate and apart from the membership lands of the individual members thereof, and in the event of the failure of the corporate real property to fully satisfy, pay, and discharge said debt and its interest, as the same may be due, to permit and allow recourse to be had in the form of first lien and right upon all membership lands in said corporation or district to the extent authorized by the provisions hereof; provided, if a majority as provided for in 35-16-210 shall file written objection to the granting of the petition, the court shall dismiss the proceeding and no similar proceeding shall be filed within 6 months thereafter.

History: En. Sec. 3, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6416, R.C.M. 1921; re-en. Sec. 6416, R.C.M. 1935; R.C.M. 1947, 14-320.

35-16-405. Execution and record of mortgage — lien. Upon the signing, entering, and docketing of a judgment authorizing the loan, the executive officers of such corporation or district shall be authorized and empowered to make, execute, and provide for the sale and delivery of notes, bonds, coupons, or other evidences of indebtedness of said corporation or district and make, execute, and deliver mortgages and deeds of trust or instruments of hypothecation, as required, as security for such debts and the interest thereon. Any such mortgage or deed of trust which may be executed and delivered in accordance herewith shall set forth at length the order and decree of the district court authorizing the same, and when recorded in the office of the county clerk and recorder of any county in which membership lands included in the membership of such corporation or district or any of the assets of said corporation or district are situated, said mortgage shall be a first lien upon all the lands of said corporation or district and upon all of the membership lands of the individual members as may be included in said corporation or district situated in such county as of the date when such lands became members of such corporation or district, to the extent of the limitation of indebtedness thereon herein provided for.

History: En. Sec. 4, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6417, R.C.M. 1921; re-en. Sec. 6417, R.C.M. 1935; R.C.M. 1947, 14-321.

35-16-406. Foreclosure of mortgage — procedure — tax levy. In the event there shall be default in either principal or interest or the terms and conditions of any bonds, notes, or mortgages or deeds of trust, made, executed, and delivered pursuant to the authority hereof, the holder or holders of such mortgage or the trustee named in the deed of trust shall be entitled to proceed to foreclose the same in the manner provided for in Title 71, and the application for foreclosure shall be proceeded with as a foreclosure proceeding. If the court in such foreclosure shall find for the plaintiff and order foreclosure of the mortgage or deed of trust as prayed for, such court is hereby empowered in its discretion to include in its judgment and decree of foreclosure an order and direction to the county clerk and recorder of each of the counties in which lands included in said mortgage are situated ordering and directing the county clerk and recorders of such counties to levy and include, as part of the taxes levied against the membership lands included therein, the proportion that such lands shall be liable for such indebtedness and costs so found to be due, which tax thus created shall be collected in whole or in part over a period of not to exceed 3 years as the court shall in its order direct.

History: En. Sec. 5, Art. 3, Ch. 152, L. 1921; re-en. Sec. 6418, R.C.M. 1921; re-en. Sec. 6418, R.C.M. 1935; R.C.M. 1947, 14-322.

CHAPTER 17

COOPERATIVE AGRICULTURAL MARKETING

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Chapter Cross-References

Unfair trade practices, 30-14-214, 30-14-216, 30-14-224.

Montana Nonprofit Corporation Act — applicability, 35-2-103.

Cooperative associations, Title 35, ch. 15.

Agricultural associations, Title 35, ch. 16.

Agricultural marketing and transportation, Title 80, ch. 11, part 1.

Wheat research and marketing, Title 80, ch. 11, part 2.

Livestock marketing, Title 81, ch. 8.

Part 1

General

35-17-101. Short title. This chapter shall be referred to as the "Cooperative Marketing Act".

History: En. Sec. 2, Ch. 233, L. 1921; re-en. Sec. 6429, R.C.M. 1921; re-en. Sec. 6429, R.C.M. 1935; R.C.M. 1947, 14-402(part).

35-17-102. Declaration of policy. In order to promote, foster, and encourage the intelligent and orderly marketing of agricultural products through cooperation and to eliminate speculation and waste and to make the distribution of agricultural products as direct as can efficiently be done between producer and consumer, to stabilize the marketing problems of agricultural products, and to supply to its members necessary equipment, this chapter is passed.

History: En. Sec. 1, Ch. 233, L. 1921; re-en. Sec. 6428, R.C.M. 1921; re-en. Sec. 6428, R.C.M. 1935; R.C.M. 1947, 14-401.

35-17-103. Definitions and associations as nonprofit entities. (1) The term "agricultural products" shall include horticultural, viticultural, forestry, dairy, livestock, poultry, bee, and any farm products.

(2) The term "association" means any corporation organized under this chapter.

(3) The term "member" shall include actual members of associations without capital stock and holders of common stock in associations organized with capital stock.

(4) The term "person" shall include individuals, firms, partnerships, corporations, and associations.

(5) Associations organized hereunder shall be deemed nonprofit inasmuch as they are not organized to make profits for themselves, as such, or for their members, as such, but only for their members as producers.

History: **En. Sec. 2, Ch. 233, L. 1921; re-en. Sec. 6429, R.C.M. 1921; re-en. Sec. 6429, R.C.M. 1935; R.C.M. 1947, 14-402(part).**

Cross-References

Nonprofit corporations generally, Title 35, ch. 2.

35-17-104. Who may organize. Five or more persons engaged in the production of agricultural products may form a nonprofit cooperative association, with or without capital stock, under the provisions of this chapter.

History: **En. Sec. 3, Ch. 233, L. 1921; re-en. Sec. 6430, R.C.M. 1921; re-en. Sec. 6430, R.C.M. 1935; R.C.M. 1947 14-403.**

35-17-105. Permissible purposes for organization. An association may be organized to engage in:

(1) any activity in connection with the marketing or selling of the agricultural products of its members or with the harvesting, preserving, drying, processing, canning, packing, storing, handling, shipping, or utilization thereof or the manufacturing or marketing of the byproducts thereof;

(2) any activity in connection with the manufacturing, selling, or supplying to its members of machinery, equipment, or supplies;

(3) the financing of the above-enumerated activities; or

(4) any one or more of the activities specified herein.

History: **En. Sec. 4, Ch. 233, L. 1921; re-en. Sec. 6431, R.C.M. 1921; re-en. Sec. 6431, R.C.M. 1935; R.C.M. 1947, 14-404.**

Cross-References

Articles to specify purpose, 35-17-202.

35-17-106. Powers of associations. Each association incorporated under this chapter shall have the following powers:

(1) to engage in any activity in connection with the marketing, selling, harvesting, preserving, drying, processing, canning, packing, storing, handling, or utilization of any agricultural products produced or delivered to it by its members or the manufacturing or marketing of the byproducts thereof or in connection with the purchase, hiring, or use by its members of supplies, machinery, or equipment or in the financing of any such activities or in any one or more of the activities specified in this section. No association shall handle the agricultural products of nonmembers in greater volume than that of members.

(2) to borrow money and to make advances to members;

(3) to act as the agent or representative of any member or members in any of the above-mentioned activities;

(4) to purchase or otherwise acquire and to hold, own, and exercise all rights of ownership in and to sell, transfer, or pledge shares of the capital stock or bonds of any corporation or association engaged in any related activity or in the handling or marketing of any of the products handled by the association;

(5) to establish reserves and to invest the funds thereof in bonds or such other property as may be provided in the bylaws;

(6) to buy, hold, and exercise all privileges of ownership over such real or personal property as may be necessary or convenient for the conducting and operation of any of the business of the association or incidental thereto;

(7) to do each and every thing necessary, suitable, or proper for the accomplishment of any one of the purposes or the attainment of any one or more of the objects herein enumerated or conducive to or expedient for the interest or benefit of the association and to contract accordingly and in addition to exercise and possess all powers, rights, and privileges necessary or incidental to the purposes for which the association is organized or to the activities in which it is engaged and in addition any other rights, powers, and privileges granted by the laws of this state to ordinary corporations, except such as are inconsistent with the expressed provisions of this chapter, and to do any such thing anywhere.

History: En. Sec. 6, Ch. 233, L. 1921; re-en. Sec. 6433, R.C.M. 1921; amd. Sec. 1, Ch. 109, L. 1933; re-en. Sec. 6433, R.C.M. 1935; R.C.M. 1947, 14-406.

Cross-References

Articles of incorporation to specify purpose, 35-17-202.

Who may be members, 35-17-301.

Assignment of agreement as security for loans, 35-17-408.

Part 2

Formation

Part Cross-References

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.

Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.

Formation of religious corporations sole, Title 35, ch. 3, part 2.

Organization of professional service corporations, Title 35, ch. 4, part 2.

Formation and operation of business trusts, Title 35, ch. 5, part 2.

Formation of limited partnerships, Title 35, ch. 12, part 6.

Formation of mining partnerships, Title 35, ch. 13, part 1.

Formation, articles of incorporation, and bylaws of cooperative associations, Title 35, ch. 15, part 2.

Formation of agricultural associations, Title 35, ch. 16, part 2.

Formation, articles, and bylaws of rural cooperative utilities, Title 35, ch. 18, part 2.

Formation of cemetery associations, Title 35, ch. 20, part 1.

Organization of mausoleum and columbarium authorities, Title 35, ch. 21, part 2.

35-17-201. Marketing survey. Every group of persons contemplating the organization of an association under this chapter is urged to communicate with the dean of the state agricultural college who will inform it whatever a survey of the marketing conditions affecting the commodities to be handled by the proposed association indicates regarding probable success.

History: En. Sec. 5, Ch. 233, L. 1921; re-en. Sec. 6432, R.C.M. 1921; re-en. Sec. 6432, R.C.M. 1935; R.C.M. 1947, 14-405.

35-17-202. Articles of incorporation — contents — filing — articles or copies as prima facie evidence. (1) Each association formed under this chapter must prepare and file articles of incorporation setting forth:

(a) the name of the association;

(b) the purposes for which it is formed;

(c) the place where its principal business will be transacted;

(d) the term for which it is to exist, which may be perpetual;

(e) the number of its directors or trustees, which shall not be less than 5 or more than 13, and the names and residences of those who are appointed for the first 3 months and until their successors are elected and qualified;

(f) if organized without capital stock, whether the property rights and interest of each member shall be equal or unequal, and if unequal, the articles shall set forth the general rule or rules applicable to all members by which the property rights and interests, respectively, of each member may and shall be determined and fixed. The association shall have the power to admit new members who shall be entitled to share in the property of the association with the old members, in accordance with such general rule or rules.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-202(2)(a)(v).

(3) The articles must be subscribed by the incorporators and shall be filed in accordance with the provisions of the general corporation law of this state, and when so filed the articles of incorporation or certified copies thereof shall be received in all the courts of this state and other places as prima facie evidence of the facts contained therein and of the due incorporation of such association.

History: En. Sec. 8, Ch. 233, L. 1921; re-en. Sec. 6435, R.C.M. 1921; re-en. Sec. 6435, R.C.M. 1935; amd. Sec. 1, Ch. 298, L. 1977; R.C.M. 1947, 14-408; amd. Sec. 36, Ch. 174, L. 1983; amd. Sec. 5, Ch. 559, L. 1987.

Cross-References

Articles of incorporation — filing — issuance of certificate of incorporation, 35-1-203.

Permissible purposes for organization, 35-17-105.

Directors, 35-17-311.

35-17-203. Amendments to articles of incorporation. At any time after filing, the articles of incorporation may be amended. Any amendment of the articles of incorporation shall be approved by two-thirds of the directors and then adopted by vote of not less than two-thirds of those stockholders voting thereon at any regular meeting of the stockholders or at a special meeting of the stockholders called for that purpose. A statement setting forth the amendment shall be executed on behalf of the association by its president or vice-president and its corporate seal affixed thereto and attested by its secretary. The statement shall be filed in the office of the secretary of state who shall thereupon issue a certificate of amendment of the articles of incorporation. A certified copy of such certificate shall be filed in the office of the county clerk for the county in which the principal office of the association is located.

History: En. Sec. 9, Ch. 233, L. 1921; re-en. Sec. 6436, R.C.M. 1921; re-en. Sec. 6436, R.C.M. 1935; amd. Sec. 2, Ch. 298, L. 1977; R.C.M. 1947, 14-409; amd. Sec. 37, Ch. 174, L. 1983.

Cross-References

Articles of incorporation — filing — issuance of certificate of incorporation, 35-1-203.

Amendments of articles of incorporation of cooperative associations, 35-15-205.

Amendments of articles of incorporation of rural cooperative utilities, 35-18-204, 35-18-501.

35-17-204. Adoption of chapter by existing associations. Any corporation or association organized under statutes existing prior to March 5, 1921, may, by a majority vote of its stockholders or members, be brought under the provisions of this chapter by limiting its membership and adopting the other restrictions as provided herein. It shall prepare one original and one copy of a statement signed by its directors, upon forms supplied by the secretary of state, to the effect that the corporation or association has by a majority vote of its stockholders or members decided to accept the benefits and be bound by provisions of this chapter. Articles of incorporation shall be filed as required in 35-17-202, except that they shall be signed by the members of the board of directors. The filing fee shall be the same as for filing an amendment to articles of incorporation.

History: En. Sec. 20, Ch. 233, L. 1921; re-en. Sec. 6447, R.C.M. 1921; re-en. Sec. 6447, R.C.M. 1935; R.C.M. 1947, 14-420; amd. Sec. 157, Ch. 575, L. 1981; amd. Sec. 55, Ch. 131, L. 1983; amd. Sec. 38, Ch. 174, L. 1983.

Cross-References

Filing fees, 35-17-409.

35-17-205. Fees for filing articles and amendments thereto. For filing articles of incorporation and receiving a certificate of incorporation, an association organized hereunder shall pay to the secretary of state $40 and for filing an amendment to the articles and receiving a certificate of amendment, $10.

History: En. Sec. 22, Ch. 233, L. 1921; re-en. Sec. 6449, R.C.M. 1921; re-en. Sec. 6449, R.C.M. 1935; amd. Sec. 4, Ch. 117, L. 1961; R.C.M. 1947, 14-422.

Cross-References

Issuance of certificate of organization for cooperative associations, 35-15-204.

Issuance of certificate of incorporation for agricultural associations, 35-16-204.

Filing fees, 35-17-409.

Certificate of incorporation for cemetery associations, 35-20-103.

35-17-206. Bylaws. (1) Each association incorporated under this chapter must, within 30 days after its incorporation, adopt for its government and management a code of bylaws, not inconsistent with the powers granted by this chapter. A majority vote of the members or stockholders or their written assent is necessary to adopt such bylaws. The bylaws may be amended at any regular or special meeting if approved by a majority vote of the stockholders voting thereon.

(2) Each association under its bylaws may also provide for any or all of the following matters:

(a) the time, place, and manner of calling and conducting its meetings;

(b) the number of stockholders or members constituting a quorum;

(c) the right of members or stockholders to vote by proxy or by mail or by both and the conditions, manner, form, and effects of such votes;

(d) the number of directors constituting a quorum;

(e) the qualifications, compensation, duties, and term of office of directors and officers, time of their election, and the mode and manner of giving notice thereof;

(f) penalties for violations of the bylaws;

(g) the amount of entrance, organization, and membership fees, if any, the manner and method of collection of the same, and the purposes for which they may be used;

(h) the amount which each member or stockholder shall be required to pay annually or from time to time, if at all, to carry on the business of the association, the charge, if any, to be paid by each member or stockholder for services rendered by the association to him and the time of payment and the manner of collection, and the marketing contract between the association and its members or stockholders which every member or stockholder may be required to sign;

(i) the number and qualifications of members or stockholders of the association and the conditions precedent to membership or ownership of common stock; the method, time, and manner of permitting members to withdraw or the holders of common stock to transfer their stock; the manner of assignment and transfer of the interest of members and the shares of common stock; the conditions upon which and the time when membership of any member shall cease;

(j) the automatic suspension of the rights of a member when he ceases to be eligible to membership in the association and the mode, manner, and effect of the expulsion of a member;

(k) the manner of determining the value of a member's interest and provision for its purchase by the association upon the death or withdrawal of a member or stockholder or upon the expulsion of a member or forfeiture of his membership or, at the option of the association, by conclusive appraisal by the board of directors.

History: En. Sec. 10, Ch. 233, L. 1921; re-en. Sec. 6437, R.C.M. 1921; re-en. Sec. 6437, R.C.M. 1935; amd. Sec. 3, Ch. 298, L. 1977; R.C.M. 1947, 14-410(part).

Cross-References

Operation detailed, Title 35, ch. 17, part 3.

Part 3

Operation — Members, Directors, and Officers

Part Cross-References

Directors and officers of business corporations, Title 35, ch. 1, part 4.

Directors and officers of nonprofit corporations, Title 35, ch. 2, part 4.

Shareholders, directors, and officers of cooperative associations, Title 35, ch. 15, part 3.

Members and directors of agricultural associations, Title 35, ch. 16, part 3.

Bylaws, 35-17-206.

Members, trustees, and officers of rural cooperative utilities, Title 35, ch. 18, part 3.

Trustees of cemetery associations, Title 35, ch. 20, part 2.

Governing board of mausoleum and columbarium associations, 35-21-205.

35-17-301. Who may be members. (1) Under the terms and conditions prescribed in its bylaws, an association may admit as members or issue common stock only to persons engaged in the production of the agricultural products to be handled by or through the association, including the lessees and tenants of land used for the production of such products and any lessors and landlords who receive as rent part of the crop raised on the leased premises.

(2) If a member of a nonstock association be other than a natural person, such member may be represented by any individual, associate, officer, or member thereof duly authorized in writing.

(3) One association organized hereunder may become a member or stockholder of any other association or associations organized hereunder.

History: En. Sec. 7, Ch. 233, L. 1921; re-en. Sec. 6434, R.C.M. 1921; re-en. Sec. 6434, R.C.M. 1935; R.C.M. 1947, 14-407.

35-17-302. Stock — issuance — limitations on ownership and transfer — repurchase by association. (1) When a member of an association established without capital stock has paid his membership fee in full, he shall receive a certificate of membership.

(2) No association shall issue stock to a member until it has been fully paid for. The promissory notes of the members may be accepted by the association as full or partial payment. The association shall hold the stock as security for the payment of the note, but such retention as security shall not affect the members' right to vote.

(3) No stockholder of a cooperative association shall own more than one-twentieth of the issued common stock of the association, and an association, in its bylaws, may limit the amount of common stock which one member may own to any amount less than one-twentieth of the issued common stock.

(4) The bylaws shall prohibit the transfer of the common stock of the association to persons not engaged in the production of the agricultural products handled by the association, and such restrictions must be printed upon every certificate of stock subject thereto.

(5) The association may at any time, except when the debt of the association exceeds 50% of the assets thereof, buy in or purchase its common stock at book value thereof as conclusively determined by the board of directors and pay for it in cash within 1 year thereafter.

History: En. Sec. 14, Ch. 233, L. 1921; re-en. Sec. 6441, R.C.M. 1921; re-en. Sec. 6441, R.C.M. 1935; R.C.M. 1947, 14-414(part).

Cross-References

Shares of business corporations, Title 35, ch. 1, part 6.

Shares of cooperative associations, Title 35, ch. 15, part 4.

Stockholder provisions of agricultural associations, Title 35, ch. 16, part 2.

Conversion of corporation shares into rural cooperative utility memberships, 35-18-206.

Power to issue stock for mausoleum and columbarium authorities, 35-21-202.

35-17-303. Limited liability of members. Except for debts lawfully contracted between him and the association, no member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his membership fee or his subscription to the capital stock, including any unpaid balance on any promissory notes given in payment thereof.

History: En. Sec. 14, Ch. 233, L. 1921; re-en. Sec. 6441, R.C.M. 1921; re-en. Sec. 6441, R.C.M. 1935; R.C.M. 1947, 14-414(part).

35-17-304. Withdrawal or expulsion of member. In case of the withdrawal or expulsion of a member, the board of directors shall equitably and conclusively appraise his property interests in the association and shall fix the amount thereof in money, which shall be paid to him within 1 year after such expulsion or withdrawal.

History: En. Sec. 10, Ch. 233, L. 1921; re-en. Sec. 6437, R.C.M. 1921; re-en. Sec. 6437, R.C.M. 1935; amd. Sec. 3, Ch. 298, L. 1977; R.C.M. 1947, 14-410(part).

35-17-305. Meetings of members — general and special — how called — notice — one vote per member. (1) In its bylaws each association shall provide for one or more regular meetings annually.

(2) The board of directors shall have the right to call a special meeting at any time, and 10% of the members or stockholders may file a petition stating the specific business to be brought before the association and demand a

special meeting at any time. Such meeting must thereupon be called by the directors.

(3) Notice of all meetings, together with a statement of the purposes thereof, shall be mailed to each member at least 10 days prior to the meeting. However, the bylaws may require instead that such notice may be given by publication in a newspaper of general circulation published at the principal place of business of the association.

(4) No member or stockholder shall be entitled to more than one vote.

History: (1) thru (3)En. Sec. 11, Ch. 233, L. 1921; re-en. Sec. 6438, R.C.M. 1921; re-en. Sec. 6438, R.C.M. 1935; Sec. 14-411, R.C.M. 1947; (4)En. Sec. 14, Ch. 233, L. 1921; re-en. Sec. 6441, R.C.M. 1921; re-en. Sec. 6441, R.C.M. 1935; Sec. 14-414, R.C.M. 1947; R.C.M. 1947, 14-411, 14-414(part).

35-17-306 through 35-17-310 reserved.

35-17-311. Directors — election — compensation — interest in contracts — vacancies. (1) The affairs of the association shall be managed by a board of not less than five directors elected by the members or stockholders from their own number. The bylaws may provide that the territory in which the association has members shall be divided into districts and that the directors shall be elected according to such districts. In such a case the bylaws shall specify the number of directors to be elected by each district, the manner and method of reapportioning the directors and of redistricting the territory covered by the association. The bylaws may provide that primary elections should be held in each district to elect the directors apportioned to such districts, and the result of all such primary elections must be ratified by the next regular meeting of the association.

(2) An association may provide a fair remuneration for the time actually spent by its officers and directors in its service.

(3) No director during the term of his office shall be a party to a contract for profit with the association differing in any way from the business relations accorded regular members or holders of common stock of the association or to any other kind of contract differing from terms generally current in that district.

(4) When a vacancy on the board of directors occurs, other than by expiration of term, the remaining members of the board by a majority vote shall fill the vacancy unless the bylaws provided for an election of directors by district. In such a case the board of directors shall immediately call a special meeting of the members or stockholders in that district to fill the vacancy.

History: En. Sec. 12, Ch. 233, L. 1921; re-en. Sec. 6439, R.C.M. 1921; re-en. Sec. 6439, R.C.M. 1935; R.C.M. 1947, 14-412.

35-17-312. Officers — election — bank as treasurer. The directors shall elect from their number a president and one or more vice-presidents. They shall also elect a secretary and treasurer who need not be directors, and they may combine the two latter offices and designate the combined office as secretary-treasurer. The treasurer may be a bank or any depositary and as such shall not be considered as an officer but as a function of the board of directors. In such case the secretary shall perform the usual accounting duties of the treasurer, excepting that the funds shall be deposited only as authorized by the board of directors.

History: En. Sec. 13, Ch. 233, L. 1921; re-en. Sec. 6440, R.C.M. 1921; re-en. Sec. 6440, R.C.M. 1935; R.C.M. 1947, 14-413.

35-17-313. Removal of officer or director. (1) Any member may bring charges against an officer or director by filing them in writing with the secretary of the association, together with a petition signed by 10% of the members, requesting the removal of the officer or director in question. The removal shall be voted upon at the next regular or special meeting of the association, and by a vote of a majority of the members, the association may remove the officer or director and fill the vacancy. The director or officer against whom such charges have been brought shall be informed in writing of the charges previous to the meeting and shall have an opportunity at the meeting to be heard in person or by counsel and to present witnesses, and the person or persons bringing the charges against him shall have the same opportunity.

(2) In case the bylaws provide for election of directors by districts with primary elections in each district, then the petition for removal of a director must be signed by 12% of the members residing in the district from which he was elected. The board of directors must call a special meeting of the members residing in that district to consider the removal of the director. By a vote of the majority of the members of that district, the director in question shall be removed from office.

History: En. Sec. 15, Ch. 233, L. 1921; re-en. Sec. 6442, R.C.M. 1921; re-en. Sec. 6442, R.C.M. 1935; R.C.M. 1947, 14-415.

35-17-314. Referendum to membership of matters passed by board. Upon demand of 40% of the entire board of directors, any matter that has been approved or passed by the board must be referred to the entire membership or the stockholders for decision at the next special or regular meeting. However, a special meeting may be called for the purpose.

History: En. Sec. 16, Ch. 233, L. 1921; re-en. Sec. 6443, R.C.M. 1921; re-en. Sec. 6443, R.C.M. 1935; R.C.M. 1947, 14-416.

35-17-315. Creation of capital reserve — distribution of net earnings. (1) An association organized under this chapter may set aside such part of its net earnings as its board of directors considers advisable for the purpose of creating or maintaining a capital reserve. In addition to such capital reserve, the directors may set aside a sum not to exceed 5% of the annual net earnings of the association, which shall be used for the purposes of promoting and teaching cooperative organization and principles. The directors may establish and accumulate reserves for buildings, machinery and equipment, depreciation, losses, and other proper purposes.

(2) Net earnings in excess of any such deductions shall be distributed annually to patrons on the basis of patronage. An association subject to the provisions of this chapter may distribute net earnings in cash, credits, stock, revolving fund certificates, other certificates, or securities of the association or of other associations, or in any combination thereof.

History: En. 14-430 by Sec. 4, Ch. 298, L. 1977; R.C.M. 1947, 14-430.

Part 4

Marketing Agreements

35-17-401. Marketing contracts. (1) The association and its members may make and execute marketing contracts requiring the members to sell, for any period of time not over 10 years, all or any specified part of their agricultural products or specified commodities exclusively to or through the association or any facilities to be created by the association. The contract may provide that the association may sell or resell the products of its members with or without taking title thereto and pay over to its members the resale price after deducting all necessary selling, overhead, and other costs and expenses.

(2) The bylaws and the marketing contract may fix, as liquidated damages, specific sums to be paid by the member or stockholder to the association upon the breach by him of any provisions of the marketing contract regarding the sale or delivery or withholding of products and may further provide that the member will pay all costs, premiums for bonds, expenses, and fees in case any action is brought upon the contract by the association, and any such provisions shall be valid and enforceable in the courts of this state.

(3) In the event of any such breach or threatened breach of such marketing contract by a member, the association shall be entitled to an injunction to prevent the further breach of the contract and to a decree of specific performance thereof. Pending the adjudication of such an action and upon filing a verified complaint showing the breach or threatened breach and upon filing a sufficient bond, the association shall be entitled to a temporary restraining order and preliminary injunction against the member.

History: **En. Sec. 17, Ch. 233, L. 1921; re-en. Sec. 6444, R.C.M. 1921; re-en. Sec. 6444, R.C.M. 1935; R.C.M. 1947, 14-417.**

35-17-402. Associations exempt from antimonopoly provisions. Associations executing marketing contracts in compliance with the provisions of this chapter shall not be deemed to be a conspiracy, a combination in restraint of trade, or an illegal monopoly or trust in an attempt to lessen competition or fix prices arbitrarily.

History: **En. 14-417.1 by Sec. 1, Ch. 467, L. 1973; R.C.M. 1947, 14-417.1.**

35-17-403. Recording marketing agreements. Any cooperative marketing association organized under the laws of this state or doing business in this state pursuant to the laws of this state may file for record its marketing agreements covering livestock, increase, wool, and other livestock products as hereinafter provided.

History: **En. Sec. 1, Ch. 34, L. 1927; re-en. Sec. 6449.1, R.C.M. 1935; R.C.M. 1947, 14-423.**

35-17-404. Requisites for filing. Such agreements shall be eligible for filing for record without being acknowledged before a notary public or other officer or without any affidavit of good faith or other formality but shall be signed by the member of the association and in the name of the association by a duly authorized officer of the association, and the corporate seal of the association shall be affixed.

History: **En. Sec. 2, Ch. 34, L. 1927; re-en. Sec. 6449.2, R.C.M. 1935; R.C.M. 1947, 14-424.**

35-17-405. Place of filing. Such agreements shall be filed in the office of the county clerk and recorder in the county where such livestock or livestock product is located on the date such agreement is so filed for record.

History: En. Sec. 3, Ch. 34, L. 1927; re-en. Sec. 6449.3, R.C.M. 1935; R.C.M. 1947, 14-425.

35-17-406. Recording as notice. Such recordation shall operate as constructive notice of the agreement and of the rights of the association and of its successors and assigns, as specified in the agreement and in this part.

History: En. Sec. 4, Ch. 34, L. 1927; re-en. Sec. 6449.4, R.C.M. 1935; R.C.M. 1947, 14-426.

35-17-407. When transfer of title effected on recording — lien not to extend to subsequent product. (1) In case such marketing agreement specifies that the member has agreed to sell and the association has agreed to buy the product specified in the agreement, produced by or for such member during a period of time in said agreement designated, and such agreement further provides that the association shall have the absolute title to such product and the right to enforce specific performance of the agreement and the power to borrow money thereon for any purpose of the association and that the association shall have all rights of ownership of such product without limitation, including the right to sell or pledge for its own account or as security for its own debts or otherwise, then such agreement, when so filed for record, shall operate to convey and transfer to such association full title to and possession of such product covered thereby, and any possession by the member thereafter shall be only as custodian for such association.

(2) Such agreement shall not apply or constitute any lien or encumbrance on any product derived subsequent to the term therein specified, and no release or satisfaction of such an agreement need be filed for record.

History: En. Sec. 5, Ch. 34, L. 1927; re-en. Sec. 6449.5, R.C.M. 1935; R.C.M. 1947, 14-427.

35-17-408. Assignment of agreement as security for loans. Such association shall have full power to transfer and assign all of its rights under such cooperative marketing agreement, containing the provisions specified in 35-17-407, as security for loans obtained by it. Such transfer and assignment may be by endorsement on the marketing agreement so filed for record or may be made by separate document which shall adequately describe the marketing agreement or the various agreements covered thereby. Any such assignment shall be eligible for record in the same manner as is herein provided for recording of cooperative agreements. Such assignments need not be acknowledged before a notary public or other officer or contain any affidavit of good faith or other formality but shall be signed in the name of the association by a duly authorized officer of the association and the corporate seal of the association shall be affixed. The assignee under any such assignment shall be subrogated to all the rights of the association under said cooperative marketing agreements and the provisions of this part.

History: En. Sec. 6, Ch. 34, L. 1927; re-en. Sec. 6449.6, R.C.M. 1935; R.C.M. 1947, 14-428.

35-17-409. Fees of county clerk. (1) The fees payable to the county clerk and recorder shall be as follows:

(a) 50 cents for each agreement so filed for record;

(b) 50 cents for each certificate of prior liens and mortgages;

(c) 50 cents for certifying to copy of marketing agreements so filed for record;

(d) 50 cents for each assignment which is filed separately from the marketing agreement or agreements covered thereby.

(2) The county clerk and recorder shall index such agreements and assignments in the index of chattel mortgages.

History: **En. Sec. 7, Ch. 34, L. 1927; re-en. Sec. 6449.7, R.C.M. 1935; R.C.M. 1947, 14-429.**

35-17-410. Agreements and arrangements with other associations. Any association may upon resolution adopted by its board of directors enter into all necessary and proper stipulations, agreements, and contracts and arrangements with any other cooperative corporation, association, or associations formed in this or in any other state for the cooperative and more economical carrying on of its business or any part or parts thereof. Any two or more associations may by agreement between them unite in employing and using or may separately employ and use the same methods, means, and agencies for carrying on and conducting their respective businesses.

History: **En. Sec. 19, Ch. 233, L. 1921; re-en. Sec. 6446, R.C.M. 1921; re-en. Sec. 6446, R.C.M. 1935; R.C.M. 1947, 14-419.**

Part 5

Merger, Consolidation, and Sale of Assets

35-17-501. Merger or consolidation authorized. It is lawful for two or more cooperative associations formed, before or after July 1, 1977, under the laws of the state of Montana to merge or consolidate with each other. One or more such associations may merge or consolidate with one or more associations incorporated under the laws of another state relating to organization of cooperative associations by complying with the provisions of this chapter or with the applicable laws of the state where the surviving or new association has its principal place of business.

History: **En. 14-431 by Sec. 5, Ch. 298, L. 1977; R.C.M. 1947, 14-431(1).**

35-17-502. Plan of merger or consolidation. Before an association may merge or consolidate with any other association, a written plan of merger or consolidation shall be prepared by the board of directors of one or both associations, by a committee appointed for that purpose by the board of directors of one or both associations, or by a committee composed of at least 10% of the stockholders of one of the associations concerned. Such plan shall set forth all the terms of the merger or consolidation and the proposed effect thereof on each of the stockholders of the associations concerned. In the case of consolidation, the plan shall also contain a copy of the proposed articles for the new association to be formed.

History: **En. 14-431 by Sec. 5, Ch. 298, L. 1977; R.C.M. 1947, 14-431(2).**

35-17-503. Meeting to consider plan — notice. (1) Notice of the proposed plan and, in the case of consolidation, of the proposed new articles shall be mailed to each stockholder of the associations to be affected thereby.

(2) The notice shall advise the stockholders of each association of the time and place that each association will meet, at which time the proposal shall be considered and voted upon by each association. The meetings may be held not less than 30 or more than 60 days after the mailing of notice. The plan shall be considered adopted if a quorum is present and two-thirds of those voting vote in its favor.

History: **En. 14-431 by Sec. 5, Ch. 298, L. 1977; R.C.M. 1947, 14-431(3), (4).**

35-17-504. Filing of documents of merger or consolidation — effective date. (1) Within 30 days after the merger or consolidation plan has been adopted, documents of merger or consolidation setting forth the plan and the manner of adoption thereof shall be signed by the president or vice-president and by the secretary or assistant secretary of each association merging or consolidating and filed with the clerk and recorder of the county in which the principal office of the new or surviving association is located, if the office is in Montana, and with the Montana secretary of state.

(2) If the new or surviving association has its principal office in Montana, the merger or consolidation becomes effective as of the date of filing with the Montana secretary of state. If its principal office is outside the state of Montana, the merger or consolidation becomes effective upon full compliance with the laws of the state in which its principal office is located.

History: **En. 14-431 by Sec. 5, Ch. 298, L. 1977; R.C.M. 1947, 14-431(5); amd. Sec. 158, Ch. 575, L. 1981; amd. Sec. 39, Ch. 174, L. 1983.**

35-17-505. Effect of merger or consolidation — rights and obligations — rights of creditors not impaired. (1) On the effective date, the associations which are parties to a plan adopted pursuant to this part become a single association. In the case of a merger, the surviving association is that association so designated in the plan. The articles and bylaws of the surviving association are amended to the extent provided in the documents setting forth the plan of merger. In the case of a consolidation, the new association is the association provided for in the plan. The separate existence of all associations which are parties to the plan, except the surviving or new association, then ceases.

(2) The surviving or new association possesses all the rights and all the property of each of the individual associations and is responsible for all their obligations. Title to any property is vested in the surviving or new association with no reversion or impairment thereof caused by the merger or consolidation.

(3) No right of any creditor may be impaired by the merger or consolidation without his consent.

History: **En. 14-431 by Sec. 5, Ch. 298, L. 1977; R.C.M. 1947, 14-431(7); amd. Sec. 159, Ch. 575, L. 1981.**

35-17-506. Sale or disposition of assets. At any meeting, the stockholders of a cooperative association may authorize the disposition or sale of all or substantially all of the association's assets if notice that such disposition or sale will be considered at such meeting has been given to all persons entitled to vote thereon and if disposition or sale is approved by two-thirds of those stockholders voting at the meeting.

History: **En. 14-431 by Sec. 5, Ch. 298, L. 1977; R.C.M. 1947, 14-431(6).**

Cross-References

Dissolution and liquidation of business corporations, Title 35, ch. 1, part 9.

Dissolution and liquidation of nonprofit corporations, Title 35, ch. 2, part 7.

Involuntary corporate dissolution, Title 35, ch. 6.

Dissolution and winding up of partnerships in general, Title 35, ch. 10, part 6.

Dissolution of limited partnerships, Title 35, ch. 12, part 12.

Sale or disposition of assets of cooperative associations, 35-15-506.

Dissolution of rural cooperative utilities, 35-18-404, 35-18-405.

35-17-507. Statute of limitations. No action may be maintained to invalidate any sale, merger, or consolidation taken pursuant to this chapter because of the manner of its adoption unless the action is commenced within 2 years after the required filings have been made in relation to such corporate action or, if none is required, after the effective date of such corporate action.

History: En. 14-431 by Sec. 5, Ch. 298, L. 1977; R.C.M. 1947, 14-431(8).

CHAPTER 18

RURAL COOPERATIVE UTILITIES

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Chapter Cross-References

Applicability of Montana Nonprofit Corporation Act, 35-2-103.

Power and energy companies, Title 69, ch. 5.

Part 1

General

35-18-101. Short title. This chapter may be cited as the "Rural Electric and Telephone Cooperative Act".

History: En. Sec. 1, Ch. 172, L. 1939; amd. Sec. 1, Ch. 80, L. 1957; R.C.M. 1947, 14-501.

35-18-102. Definitions. (1) Corporations organized under this chapter and corporations which become subject to this chapter in the manner hereinafter provided are hereinafter referred to as "cooperatives".

(2) In this chapter, unless the context otherwise requires the following definitions apply:

(a) "Cable television system" means a system that receives and amplifies the signals broadcast by one or more television stations and redistributes the signals to subscribing members of the public for a fixed or periodic fee by wire, cable, microwave, or other means, whether such means are owned or leased.

(b) "Broadband" means transmission facilities capable of handling frequencies greater than those required for high grade voice communication (higher than 4 kilohertz).

(c) "Member" means each incorporator of a cooperative and each person admitted to and retaining membership therein and shall include a husband and wife admitted to joint membership.

(d) "Person" includes any natural person, firm, association, corporation, business trust, partnership, federal agency, state or political subdivision or agency thereof, or any body politic.

(e) "Rural area", as applied to all corporations organized under the provisions of 35-18-105(1), means any area not included within the boundaries of any incorporated or unincorporated city, town, village, or borough having a population in excess of 3,500 persons on March 17, 1939, or subsequent thereto, and every incorporated municipality in which 95% or more of the premises are served by an electric cooperative on February 1, 1971.

History: (1)En. Sec. 2, Ch. 172, L. 1939; amd. Sec. 2, Ch. 80, L. 1957; amd. Sec. 9, Ch. 7, L. 1971; Sec. 14-502, R.C.M. 1947; (2)En. Sec. 30, Ch. 172, L. 1939; amd. Sec. 1, Ch. 151, L.

1949; amd. Sec. 9, Ch. 80, L. 1957; amd. Sec. 10, Ch. 7, L. 1971; Sec. 14-530, R.C.M. 1947; R.C.M. 1947, 14-502(part), 14-530; amd. Sec. 1, Ch. 237, L. 1979; amd. Sec. 1, Ch. 208, L. 1981; amd. Sec. 2, Ch. 168, L. 1987.

35-18-103. Construction. This chapter shall be construed liberally. The enumeration of any object, purpose, power, manner, method, or thing shall not be deemed to exclude like or similar objects, purposes, powers, manners, methods, or things.

History: En. Sec. 31, Ch. 172, L. 1939; R.C.M. 1947, 14-531.

35-18-104. Exemption from jurisdiction of the public service commission. Cooperatives and foreign corporations transacting business in this state pursuant to this chapter shall be exempt in all respects from the jurisdiction and control of the public service commission of this state.

History: En. Sec. 29, Ch. 172, L. 1939; R.C.M. 1947, 14-529.

Cross-References

Regulation of utilities, Title 69, ch. 3.

Utility lines and facilities provisions, Title 69, ch. 4.

35-18-105. Permissible purposes for incorporation. Cooperative nonprofit membership corporations may be organized under this chapter for the following purposes:

(1) for the purpose of supplying electric energy and promoting and extending the use thereof in rural areas, as provided in this chapter;

(2) for the purposes of making generally available adequate telephone service, cable television service, or broadband facilities through the improvement and expansion of existing telephone, cable television, or broadband facilities and the construction and operation of such additional facilities as are required to assure the availability of such service to the widest practicable number of users thereof.

History: En. Sec. 2, Ch. 172, L. 1939; amd. Sec. 2, Ch. 80, L. 1957; amd. Sec. 9, Ch. 7, L. 1971; R.C.M. 1947, 14-502(part); amd. Sec. 2, Ch. 237, L. 1979; amd. Sec. 1, Ch. 254, L. 1985; amd. Sec. 3, Ch. 168, L. 1987.

35-18-106. Powers of cooperatives. A cooperative shall have power to:

(1) sue and be sued in its corporate name;

(2) have perpetual existence;

(3) adopt a corporate seal and alter the same at pleasure;

(4) become a member in one or more other cooperatives or corporations or to own stock therein;

(5) construct, purchase, take, receive, lease as lessee, or otherwise acquire and to own, hold, use, equip, maintain, and operate and sell, assign, transfer, convey, exchange, lease as lessor, mortgage, pledge, or otherwise dispose of or encumber electric transmission and distribution lines or systems, electric generating plants, electric refrigeration plants, telephone lines, facilities or systems (but not telegraph or radio broadcasting services or facilities) as defined by law, lands, buildings, structures, dams, plants and equipment, and any and all kinds or classes of real or personal property whatsoever, which shall be deemed necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized;

(6) purchase or otherwise acquire and own, hold, use, and exercise and sell, assign, transfer, convey, mortgage, pledge, hypothecate, or otherwise dispose of or encumber franchises, rights, privileges, licenses, rights-of-way, and easements;

(7) borrow money and otherwise contract indebtedness and issue notes, bonds, and other evidences of indebtedness therefor and secure the payment thereof by mortgage, pledge, deed of trust, or any other encumbrance upon any or all of its then owned or after-acquired real or personal property, assets, franchises, revenues, or income;

(8) construct, maintain, and operate electric transmission and distribution lines or telephone, cable television, or broadband lines, facilities, or systems along, upon, under, and across all public thoroughfares, including without limitation all roads, highways, streets, alleys, bridges, and causeways and upon, under, and across all publicly owned lands, subject, however, to the same requirements in respect of the use of such thoroughfares and lands as are imposed by the respective authorities having jurisdiction thereof upon corporations constructing or operating electric transmission and distribution lines or systems or telephone lines, facilities, or systems;

(9) exercise the power of eminent domain in the manner provided by the laws of this state for the exercise of that power by corporations constructing or operating electric transmission and distribution lines or systems or telephone lines, facilities, or systems;

(10) conduct its business and exercise any or all of its powers within or without this state;

(11) adopt, amend, and repeal bylaws;

(12) in the case of corporations organized under the provisions of 35-18-105(1):

(a) generate, manufacture, purchase, acquire, accumulate, and transmit electric energy and distribute, sell, supply, and dispose of electric energy in rural areas to its members, to governmental agencies and political subdivisions, and to other persons not in excess of 10% of the number of its members;

(b) make loans to persons to whom electric energy is or will be supplied by the cooperative for the purpose of and otherwise to assist such persons in wiring their premises and installing therein electrical and plumbing fixtures, appliances, apparatus, and equipment of any and all kinds and character and, in connection therewith, purchase, acquire, lease, sell, distribute, install, and repair such electrical and plumbing fixtures, appliances, apparatus, and equipment and accept or otherwise acquire and sell, assign, transfer, endorse, pledge, hypothecate, and otherwise dispose of notes, bonds, and other evidences of indebtedness and any and all types of security therefor;

(c) make loans to persons to whom electric energy is or will be supplied by the cooperatives for the purpose of and otherwise to assist such persons in constructing, maintaining, and operating electric refrigeration plants;

(13) in the case of corporations organized under the provisions of 35-18-105(2):

(a) improve and expand existing telephone lines, facilities, and systems and construct, acquire, operate, and furnish such additional telephone lines, facilities, and systems as are required to assure the availability of adequate telephone service to the widest practicable number of users thereof;

(b) make loans to persons to whom telephone service is or will be supplied by the cooperative for the purpose of and otherwise to assist such persons in wiring their premises for telephone service and installing therein telephone fixtures, appliances, apparatus, and equipment of any and all kinds and character and, in connection therewith, purchase, acquire, lease, sell, distribute, install, and repair such telephone fixtures, appliances, apparatus, and equipment and accept or otherwise acquire and sell, assign, transfer, endorse, pledge, hypothecate, and otherwise dispose of notes, bonds, and other evidences of indebtedness and any and all types of security therefor;

(14) do and perform any and all other acts and things and have and exercise any and all other powers which may be necessary, convenient, or appropriate to accomplish the purpose for which the cooperative is organized.

History: En. Sec. 3, Ch. 172, L. 1939; amd. Sec. 3, Ch. 80, L. 1957; R.C.M. 1947, 14-503; amd. Sec. 3, Ch. 237, L. 1979; amd. Sec. 2, Ch. 254, L. 1985; amd. Sec. 4, Ch. 168, L. 1987.

Cross-References

Articles of incorporation, 35-18-203.

Bylaws, 35-18-207.

Disposition or encumbrance of property, 35-18-317.

Merger or consolidation, 35-18-403.

35-18-107. Foreign corporations. (1) Any corporation organized under the laws of a state adjacent to this state on a nonprofit or a cooperative basis for the purpose of supplying electric energy in rural areas and owning and operating electric transmission or distribution lines in such state shall be permitted to extend its lines into and transact business in this state without complying with any statute of this state pertaining to the qualification of foreign corporations for the transaction of business in this state.

(2) Any such foreign corporation, as a prerequisite to the extension of its lines into and the transaction of business in this state, shall, by an instrument executed and acknowledged in its behalf by its president or vice-president under its corporate seal attested by its secretary, designate the secretary of state its agent to accept service of process in its behalf. In the event any process shall be served upon the secretary of state, he shall forthwith forward the same by registered or certified mail to such corporation at the address thereof specified in such instrument.

(3) Any such corporation may sue and be sued in the courts of this state to the same extent that a cooperative may sue or be sued in such courts.

(4) Any such foreign corporation may secure its notes, bonds, or other evidences of indebtedness by mortgage, pledge, deed of trust, or other encumbrance upon any or all of its then-owned or after-acquired real or personal property, assets, or franchises located or to be located in this state and also upon the revenues and income to be derived therefrom.

History: En. Sec. 26, Ch. 172, L. 1939; R.C.M. 1947, 14-526.

Cross-References

Merger, consolidation, dissolution, winding up, Title 35, ch. 18, part 4.

35-18-108. Waiver of notice. (1) Whenever any notice is required to be given under the provisions of this chapter or under the provisions of the articles of incorporation or bylaws of a cooperative, waiver thereof in writing, signed by the person or persons entitled to such notice whether before or after the time fixed for the giving of such notice, shall be deemed equivalent to such notice.

(2) If a person or persons entitled to notice of a meeting shall attend such meeting, such attendance shall constitute a waiver of notice of the meeting, except in case the attendance is for the express purpose of objecting to the transaction of any business because the meeting shall not have been lawfully called or convened.

History: **En. Sec. 24, Ch. 172, L. 1939; R.C.M. 1947, 14-524.**

Cross-References

Meetings of members, 35-18-303.

35-18-109. No area restriction — telephone cooperatives. A telephone cooperative, regardless of when it was organized pursuant to 35-18-105, is not restricted by population of area served or other criteria to any area of service.

History: **En. Sec. 1, Ch. 168, L. 1987.**

Part 2

Formation — Articles of Incorporation — Bylaws

Part Cross-References

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.

Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.

Formation of religious corporations sole, Title 35, ch. 3, part 2.

Organization of professional service corporations, Title 35, ch. 4, part 2.

Formation and operation of business trusts, Title 35, ch. 5, part 2.

Formation of limited partnerships, Title 35, ch. 12, part 6.

Formation of mining partnerships, Title 35, ch. 13, part 1.

Formation, articles of incorporation, and bylaws of cooperative associations, Title 35, ch. 15, part 2.

Formation of agricultural associations, Title 35, ch. 16, part 2.

Formation of cooperative agricultural marketing associations, Title 35, ch. 17, part 2.

Formation of cemetery associations, Title 35, ch. 20, part 1.

Organization of mausoleum and columbarium authorities, Title 35, ch. 21, part 2.

35-18-201. Name. (1) The name of each cooperative shall include the words "electric" or "telephone" and "cooperative" and the abbreviation "Inc."; provided, however, such limitations shall not apply if, in an affidavit made by the president or vice-president of a cooperative and filed with the secretary of state, it shall appear that the cooperative desires to transact business in another state and is precluded therefrom by reason of its name.

(2) The name of a cooperative shall distinguish it from the name of any other corporation organized under the laws of or authorized to transact business in this state.

(3) The words "electric" or "telephone" and "cooperative" shall not both be used in the name of any corporation organized under the laws of or authorized to transact business in this state, except a cooperative or a corporation transacting business in this state pursuant to the provisions of this chapter.

History: **En. Sec. 4, Ch. 172, L. 1939; amd. Sec. 4, Ch. 80, L. 1957; R.C.M. 1947, 14-504.**

Cross-References

Assumed business names, Title 30, ch. 13, part 2.

Exclusivity of corporate name, 30-13-202.

Business corporation, corporate name, Title 35, ch. 1, part 3.

Foreign corporation, corporate name, 35-1-1006.

Nonprofit corporation, corporate name, 35-2-301.

Foreign nonprofit corporation, corporate name, 35-2-805, 35-2-806.

Business trust name, 35-5-201.

Acquisition of new name by dissolved corporation upon reinstatement, 35-6-203.

Restrictions on limited partnership names, 35-12-505.

35-18-202. Incorporators. Five or more natural persons or two or more cooperatives may organize a cooperative in the manner hereinafter provided.

History: En. Sec. 5, Ch. 172, L. 1939; R.C.M. 1947, 14-505.

Cross-References

Members — incorporators — users, 35-18-301.

Incorporators' role in dissolution, 35-18-404.

35-18-203. Articles of incorporation. (1) The articles of incorporation of a cooperative shall recite in the caption that they are executed pursuant to this chapter, shall be signed by each of the incorporators, and shall state:

(a) the name of the cooperative;

(b) the address of its principal office;

(c) the names and addresses of the incorporators;

(d) the names and addresses of the persons who shall constitute its first board of trustees; and

(e) any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of its business and affairs.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-202(2)(a)(v).

(3) Such articles of incorporation shall be submitted to the secretary of state for filing as provided in this chapter.

(4) It shall not be necessary to set forth in the articles of incorporation of a cooperative the purpose for which it is organized or any of the corporate powers vested in a cooperative under this chapter.

History: En. Sec. 6, Ch. 172, L. 1939; R.C.M. 1947, 14-506; amd. Sec. 40, Ch. 174, L. 1983; amd. Sec. 6, Ch. 559, L. 1987.

Cross-References

Effect of merger or consolidation, 35-18-403.

Filings and fees, Title 35, ch. 18, part 5.

35-18-204. Amendment of articles of incorporation. A cooperative may amend its articles of incorporation by complying with the following requirements:

(1) The proposed amendment shall be first approved by the board of trustees and shall then be submitted to a vote of the members at any annual or special meeting thereof, the notice of which shall set forth the proposed amendment. The proposed amendment, with such changes as the members shall choose to make therein, shall be deemed to be approved on the affirmative vote of not less than two-thirds of those members voting thereon at such meeting.

(2) Upon such approval by the members, articles of amendment shall be executed on behalf of the cooperative by its president or vice-president and its corporate seal shall be affixed thereto and attested by its secretary. The

articles of amendment shall recite in the caption that they are executed pursuant to this chapter and shall state:

(a) the name of the cooperative;

(b) the address of its principal office;

(c) the date of the filing of its articles of incorporation in the office of the secretary of state; and

(d) the amendment to its articles of incorporation.

(3) The president or vice-president executing such articles of amendment shall also make and annex thereto an affidavit stating that the provisions of this section were duly complied with.

(4) Such articles of amendment and affidavit shall be submitted to the secretary of state for filing as provided in this chapter.

History: **En. Sec. 12, Ch. 172, L. 1939; R.C.M. 1947, 14-512(a); amd. Sec. 41, Ch. 174, L. 1983.**

Cross-References

Amendments of articles of incorporation of cooperative associations, 35-15-205.

Amendments of articles of incorporation of cooperative agricultural marketing associations, 35-17-203.

Amendments of articles of incorporation of rural cooperative utilities, 35-18-501.

35-18-205. Change of principal office without amendment. A cooperative may, without amending its articles of incorporation, upon authorization of its board of trustees, change the location of its principal office by filing a certificate of change of principal office executed by its president or vice-president, under its seal attested by its secretary, in the office of the secretary of state and also in each county office in which its articles of incorporation or any prior certificate of change of principal office of such cooperative has been filed and paying the fees prescribed in this chapter in connection therewith. Such cooperative shall also, within 30 days after the filing of such certificate of change of principal office in any county office, file therein certified copies of its articles of incorporation and all amendments thereto, if not already on file therein.

History: **En. Sec. 12, Ch. 172, L. 1939; R.C.M. 1947, 14-512(b); amd. Sec. 42, Ch. 174, L. 1983.**

Cross-References

Filing fees, 35-18-502.

35-18-206. Existing corporations — reorganization under this chapter — articles of conversion. Any corporation organized under the laws of this state for the purpose, among others, of supplying electric energy in rural areas or telephone service may become subject to this chapter with the same effect as if originally organized under this chapter by complying with the following requirements:

(1) The proposition for the conversion of such corporation into a cooperative under this chapter and proposed articles of conversion to give effect thereto shall be first approved by the board of trustees or the board of directors, as the case may be, of such corporation. The proposed articles of conversion shall recite in the caption that they are executed pursuant to this chapter and shall state:

(a) the name of the corporation prior to its conversion into a cooperative under this chapter;

(b) the address of the principal office of such corporation;

(c) the date of the filing of its articles of incorporation in the office of the secretary of state;

(d) the statute or statutes under which such corporation was organized;

(e) the name assumed by such corporation;

(f) a statement that such corporation elects to become a cooperative, nonprofit, membership corporation subject to this chapter;

(g) the manner and basis of converting either memberships in or shares of stock of such corporation into memberships therein after completion of the conversion; and

(h) any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of its business and affairs.

(2) The proposition for the conversion of such corporation into a cooperative under this chapter and the proposed articles of conversion approved by the board of trustees or board of directors, as the case may be, of such corporation shall then be submitted to a vote of the members or stockholders, as the case may be, of such corporation at any duly held annual or special meeting thereof, the notice of which shall set forth full particulars concerning the proposed conversion. The proposition for the conversion of such corporation into a cooperative under this chapter and the proposed articles of conversion, with such amendments thereto as the members or stockholders of such corporation shall choose to make therein, shall be deemed to be approved upon the affirmative vote of not less than two-thirds of those members of such corporation voting thereon at such meeting or, if such corporation is a stock corporation, upon the affirmative vote of the holders of not less than two-thirds of the capital stock of such corporation represented at such meeting.

(3) Upon such approval by the members or stockholders of such corporation, articles of conversion in the form approved by such members or stockholders of such corporation shall be executed on behalf of such corporation by its president or vice-president and its corporate seal shall be affixed thereto and attested by its secretary or assistant secretary. The president or vice-president executing such articles of conversion on behalf of such corporation shall also make and annex thereto an affidavit stating that the provisions of this section with respect to the approval of its trustees or directors and its members or stockholders of the proposition for the conversion of such corporation into a cooperative under this chapter and such articles of conversion were duly complied with.

(4) Such articles of conversion and affidavit shall be submitted to the secretary of state for filing as provided in this chapter.

(5) The term "articles of incorporation" as used in this chapter shall be deemed to include the articles of conversion of a converted corporation.

History: En. Sec. 16, Ch. 172, L. 1939; amd. Sec. 7, Ch. 80, L. 1957; R.C.M. 1947, 14-516; amd. Sec. 43, Ch. 174, L. 1983; amd. Sec. 5, Ch. 168, L. 1987.

Cross-References

Shares of business corporations, Title 35, ch. 1, part 6.

Shares of cooperative associations, Title 35, ch. 15, part 4.

Stockholder provisions of agricultural associations, Title 35, ch. 16, part 2.

Stock of cooperative agricultural marketing associations, 35-17-302.

Filing and fees for articles of conversion, 35-18-501, 35-18-502.

Power to issue stock for mausoleum and columbarium authorities, 35-21-202.

35-18-207. Bylaws. The original bylaws of a cooperative shall be adopted by its board of trustees. Thereafter bylaws shall be adopted, amended, or repealed by its members. The bylaws shall set forth the rights and duties of members and trustees and may contain other provisions for the regulation and management of the affairs of the cooperative not inconsistent with this chapter or with the articles of incorporation.

History: En. Sec. 7, Ch. 172, L. 1939; R.C.M. 1947, 14-507.

Part 3

Operation — Members, Trustees, and Officers

Part Cross-References

Directors and officers of business corporations, Title 35, ch. 1, part 4.

Directors and officers of nonprofit corporations, Title 35, ch. 2, part 4.

Shareholders, directors, and officers of cooperative associations, Title 35, ch. 15, part 3.

Members and directors of agricultural associations, Title 35, ch. 16, part 3.

Members, directors, and officers of cooperative agricultural marketing associations, Title 35, ch. 17, part 3.

35-18-301. Members. (1) No person who is not an incorporator shall become a member of a cooperative unless such person shall agree to use electric energy or telephone service furnished by the cooperative when such electric energy or telephone service shall be available through its facilities. The bylaws may provide that any person, including an incorporator, shall cease to be a member of a cooperative if he shall fail or refuse to use electric energy or telephone service made available by the cooperative or if electric energy or telephone service shall not be made available to such person by the cooperative within a specified time after such person shall have become a member thereof.

(2) Membership in the cooperative shall not be transferable, except as provided in the bylaws. The bylaws may prescribe additional qualifications and limitations in respect to membership.

History: En. Sec. 8, Ch. 172, L. 1939; amd. Sec. 5, Ch. 80, L. 1957; R.C.M. 1947, 14-508(a).

35-18-302. Nonliability of members for debts of cooperative. The private property of the members of a cooperative shall be exempt from execution for the debts of the cooperative, and no member shall be liable or responsible for any debts of the cooperative.

History: En. Sec. 22, Ch. 172, L. 1939; R.C.M. 1947, 14-522.

Cross-References

Property exempt from execution, Title 25, ch. 13, part 6.

Effect of merger or consolidation on liabilities, 35-18-403.

Liabilities under dissolution and winding up of cooperatives, 35-18-404, 35-18-405.

35-18-303. Meetings of members — general and special — place — notice — quorum — voting. (1) An annual meeting of the members shall be held at such time as shall be provided in the bylaws.

(2) Special meetings of the members may be called by the board of trustees, by any three trustees, by not less than 10% of the members, or by the president.

(3) Meetings of members shall be held at such place as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held at such place as shall be determined by the board of trustees.

(4) Except as hereinafter otherwise provided, written or printed notice stating the time and place of each meeting of members and, in the case of a special meeting, the purpose or purposes for which the meeting is called shall be given to each member, either personally or by mail, not less than 10 or more than 25 days before the date of the meeting.

(5) Five percent of all members present in person or 50 members present in person, whichever is fewer, shall constitute a quorum for the transaction of business at all meetings of the members, but the bylaws may prescribe the presence of a greater percentage or number of the members for a quorum. If less than a quorum is present at any meeting, a majority of those present in person may adjourn the meeting from time to time without further notice.

(6) Each member shall be entitled to one vote on each matter submitted to a vote at a meeting. Voting shall be in person but, if the bylaws so provide, may also be by proxy or by mail, or both. If the bylaws provide for voting by proxy or by mail, they shall also prescribe the conditions under which proxy or mail voting or both shall be exercised. In any event, no person shall vote as a proxy for more than three members at any meeting of the members.

History: **En. Sec. 8, Ch. 172, L. 1939; amd. Sec. 5, Ch. 80, L. 1957; R.C.M. 1947, 14-508(b) thru (g); amd. Sec. 1, Ch. 131, L. 1981.**

35-18-304. Initiative by members — approval of trustees not required. (1) Notwithstanding any other provision of this chapter, there shall be submitted to the members of a cooperative any proposition embodied in a petition signed by not less than 10% of its members, together with any document submitted with such petition to give the effect to the proposition, either at a special meeting of the members held within 45 days after the presentation of such petition or, if the date of the next annual meeting of members falls within 90 days after such presentation or if the petition so requests, at such annual meeting.

(2) The approval of the board of trustees shall not be required in respect of any proposition or document submitted to the members pursuant to this section and approved by them, but such proposition or document shall be subject to all other applicable provisions of this chapter. The affidavit or affidavits required to be filed with any such document pursuant to applicable provisions of this chapter shall, in such case, be modified to show compliance with the provisions of this section.

History: **En. Sec. 17, Ch. 172, L. 1939; R.C.M. 1947, 14-517.**

35-18-305 through 35-18-310 reserved.

35-18-311. Board of trustees — number — qualifications — removal — compensation — husband and wife. (1) The business and affairs of a cooperative shall be managed by a board of not less than five trustees, each of whom shall be a member of the cooperative or of another cooperative which shall be a member thereof. The bylaws shall prescribe the number of trustees, their qualifications, other than those provided for in this chapter, the manner of holding meetings of the board of trustees and of the election of successors to trustees who shall resign, die, or otherwise be incapable of acting. The bylaws may also provide for the removal of trustees from office and for the election of their successors.

(2) Without approval of the membership, trustees shall not receive any salaries for their services as trustees and, except in emergencies, shall not be employed by the cooperative in any capacity involving compensation. The bylaws may, however, provide that the board of trustees may establish a fixed sum, including expenses of attendance, if any, to be allowed for:

(a) attendance at each meeting of the board of trustees or any committee thereof; or

(b) representing the cooperative at any meeting or on any business whenever such representation has been approved by the board.

(3) If a husband and wife hold joint membership in a cooperative, either one but not both may be elected a trustee.

History: En. Sec. 9, Ch. 172, L. 1939; amd. Sec. 1, Ch. 208, L. 1965; R.C.M. 1947, 14-509(a), (d); amd. Sec. 1, Ch. 237, L. 1981.

35-18-312. Trustees — term — quorum — powers. (1) The trustees of a cooperative named in any articles of incorporation, consolidation, merger, or conversion, as the case may be, shall hold office until the next following annual meeting of the members or until their successors shall have been elected and qualified. At each annual meeting or, in case of failure to hold the annual meeting as specified in the bylaws, at a special meeting called for that purpose, the members shall elect trustees who may serve for 1-, 2-, or 3-year terms. Each trustee shall hold office for the term for which he is elected or until his successor shall have been elected and qualified.

(2) A majority of the board of trustees shall constitute a quorum.

(3) The board of trustees may exercise all of the powers of a cooperative, except such as are conferred upon the members by this chapter or its articles of incorporation or bylaws.

History: En. Sec. 9, Ch. 172, L. 1939; amd. Sec. 1, Ch. 208, L. 1965; R.C.M. 1947, 14-509(b), (c), (e).

35-18-313. Voting districts. (1) Notwithstanding any other provisions of this chapter, the bylaws may provide that the territory in which a cooperative supplies electric energy or telephone service to its members shall be divided into two or more voting districts and that in respect to each such voting district:

(a) a designated number of trustees shall be elected by the members residing therein;

(b) a designated number of delegates shall be elected by the members residing therein; or

(c) both such trustees and delegates shall be elected by such members.

(2) In any such case the bylaws shall prescribe the manner in which such voting districts and the members thereof and the delegates and trustees, if any, elected therefrom shall function and the powers of the delegates, which may include the power to elect trustees.

(3) No member at any voting district meeting and no delegate at any meeting shall vote by proxy or by mail.

History: En. Sec. 10, Ch. 172, L. 1939; amd. Sec. 6, Ch. 80, L. 1957; R.C.M. 1947, 14-510.

35-18-314. Officers. The officers of a cooperative shall consist of a president, vice-president, secretary, and treasurer who shall be elected annually by and from the board of trustees. No person shall continue to hold any of the above offices after he shall have ceased to be a trustee. The offices of secretary and of treasurer may be held by the same person. The board of trustees may also elect or appoint such other officers, agents, or employees as it shall deem necessary or advisable and shall prescribe the powers and duties thereof. Any officer may be removed from office and his successor elected in the manner prescribed in the bylaws.

History: En. Sec. 11, Ch. 172, L. 1939; R.C.M. 1947, 14-511.

35-18-315. Authority to take acknowledgments — officer, trustee, or member. No person who is authorized to take acknowledgments under the laws of this state shall be disqualified from taking acknowledgments of instruments executed in favor of a cooperative or to which it is a party by reason of being an officer, director, or member of such cooperative.

History: En. Sec. 25, Ch. 172, L. 1939; R.C.M. 1947, 14-525.

Cross-References

Acknowledgment of instruments, Title 1, ch. 5, part 2.

35-18-316. Refunds to members. (1) Revenues of a cooperative for any fiscal year shall, unless otherwise determined by a vote of the members, be distributed by the cooperative to its members as patronage refunds prorated in accordance with the patronage of the cooperative by the respective members paid for during such fiscal year, whenever such revenues exceed the amount thereof necessary to:

(a) defray expenses of the cooperative and of the operation and maintenance of its facilities during such fiscal year;

(b) pay interest and principal obligations of the cooperative coming due in such fiscal year;

(c) finance or provide a reserve for the financing of the construction or acquisition by the cooperative of additional facilities to the extent determined by the board of trustees;

(d) provide a reasonable reserve for working capital;

(e) provide a reserve for the payment of indebtedness of the cooperative maturing more than 1 year after the date of the incurrence of such indebtedness in an amount not less than the total of the interest and principal payments in respect thereof required to be made during the next following fiscal year; and

(f) provide a fund, which shall be not less than 2% or more than 5% of the balance remaining, for education in cooperation and for the dissemination of information concerning the effective use of electric energy and other services made available by the cooperative.

(2) Nothing herein contained shall be construed to prohibit the payment by a cooperative of all or any part of its indebtedness prior to the date when the same shall become due.

History: En. Sec. 20, Ch. 172, L. 1939; R.C.M. 1947, 14-520.

Cross-References

Distributions to members under dissolution and winding up proceedings, 35-18-405.

35-18-317. Disposition or encumbrance of property. (1) Except as provided in subsection (2), a cooperative may not sell, mortgage, lease, or otherwise dispose of or encumber all or any substantial portion of its property unless such sale, mortgage, lease, or other disposition or encumbrance is authorized at a duly held meeting of members thereof by the affirmative vote of not less than two-thirds of all the members of the cooperative and unless the notice of such proposed sale, mortgage, lease, or other disposition or encumbrance shall have been contained in the notice of the meeting.

(2) The board of trustees of a cooperative, without authorization by the members thereof, shall have full power and authority to authorize the execution and delivery of a mortgage or mortgages or a deed or deeds of trust upon or the pledging or encumbrancing of any or all of the property, assets, rights, privileges, licenses, franchises, and permits of the cooperative, whether acquired or to be acquired and wherever situated, as well as the revenues and income therefrom, all upon such terms and conditions as the board of trustees shall determine, to secure any indebtedness of the cooperative to the United States of America or any instrumentality or agency thereof or to any other financing sources within the United States.

(3) Before a meeting is held to vote on authorization of disposition of cooperative property, the board of trustees shall:

(a) have the property appraised by three appraisers chosen by the board and not associated with the cooperative or a proposed buyer of cooperative property;

(b) notify all cooperative members, at least 90 days in advance, of a meeting to vote on disposition of cooperative property. Detailed proposals for disposition of such property must accompany the notice.

(c) at least 30 days before the meeting, notify all other cooperatives situated and operating in the state that the property is available for disposition and include with the notice one copy of each appraisal on the cooperative property; and

(d) at least 30 days before the meeting, mail to all members any alternative proposal made by cooperative members if it has been submitted to the board and signed by 50 or more members.

(4) The vote on property disposition may take place at an annual meeting if the board notifies the members as provided in this section.

(5) This section does not apply to the transfer of cooperative property in a merger or consolidation of cooperatives.

History: En. Sec. 21, Ch. 172, L. 1939; amd. Sec. 1, Ch. 17, L. 1971; R.C.M. 1947, 14-521; amd. Sec. 1, Ch. 289, L. 1987.

Cross-References

Powers of rural cooperative utilities, 35-18-106.

Disposition of property under merger, consolidation, and dissolution, Title 35, ch. 18, part 4.

35-18-318. Long-term indebtedness — membership approval. Before a cooperative may create or enter into an agreement that results in any direct or indirect obligation for the repayment of long-term bonded indebtedness for financing directly or indirectly the construction, maintenance, or operation of nuclear power generating facilities that may result in a rate increase to the cooperative's members for repayment of the obligation, the cooperative must receive approval from a majority of those members present and voting at the meeting. The approval must be obtained at a special meeting held for that purpose.

History: En. Sec. 1, Ch. 206, L. 1983.

Part 4

Merger, Consolidation, and Dissolution

35-18-401. Procedure for merger. Any one or more cooperatives, each of which is hereinafter designated a "merging cooperative", may merge into another cooperative, hereinafter designated the "surviving cooperative" by complying with the following requirements:

(1) The proposition for the merger of the merging cooperatives into the surviving cooperative and proposed articles of merger to give effect thereto shall be first approved by the board of trustees of each merging cooperative and by the board of trustees of the surviving cooperative. The proposed articles of merger shall recite in the caption that they are executed pursuant to this chapter and shall state:

(a) the name of each merging cooperative, the address of its principal office, and the date of the filing of its articles of incorporation in the office of the secretary of state;

(b) the name of the surviving cooperative and the address of its principal office;

(c) a statement that the merging cooperatives elect to be merged into the surviving cooperative;

(d) the terms and conditions of the merger and the mode of carrying the same into effect, including the manner and basis of converting the memberships in the merging cooperative or cooperatives into memberships in the surviving cooperative and the issuance of certificates of membership in respect of such converted memberships; and

(e) any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of the business and affairs of the surviving cooperative.

(2) The proposition for the merger of the merging cooperatives into the surviving cooperative and the proposed articles of merger approved by the board of trustees of the respective cooperatives which are parties to such proposed merger shall then be submitted to a vote of the members of each such cooperative at any annual or special meeting thereof, the notice of which shall set forth full particulars concerning the proposed merger. The proposed merger and the proposed articles of merger shall be deemed to be approved upon the affirmative vote of not less than two-thirds of those members of each cooperative voting thereon at such meeting.

(3) Upon such approval by the members of the respective cooperatives parties to the proposed merger, articles of merger in the form approved shall be executed on behalf of each such cooperative by its president or vice-president and its seal shall be affixed thereto and attested by its secretary. The president or vice-president of each cooperative executing such articles of merger shall also make and annex thereto an affidavit stating that the provisions of this section were duly complied with by such cooperative.

(4) Such articles of merger and affidavits shall be submitted to the secretary of state for filing as provided in this chapter.

History: En. Sec. 14, Ch. 172, L. 1939; R.C.M. 1947, 14-514; amd. Sec. 44, Ch. 174, L. 1983.

Cross-References

Filings and fees, 35-18-501, 35-18-502.

35-18-402. Procedure for consolidation. Any two or more cooperatives, each of which is hereinafter designated a "consolidating cooperative", may consolidate into a new cooperative, hereinafter designated the "new cooperative" by complying with the following requirements:

(1) The proposition for the consolidation of the consolidating cooperatives into the new cooperative and proposed articles of consolidation to give effect thereto shall be first approved by the board of trustees of each consolidating cooperative. The proposed articles of consolidation shall recite in the caption that they are executed pursuant to this chapter and shall state:

(a) the name of each consolidating cooperative, the address of its principal office, and the date of the filing of its articles of incorporation in the office of the secretary of state;

(b) the name of the new cooperative and the address of its principal office;

(c) the names and addresses of the persons who shall constitute the first board of trustees of the new cooperative;

(d) the terms and conditions of the consolidation and the mode of carrying the same into effect, including the manner and basis of converting memberships in each consolidating cooperative into memberships in the new cooperative and the issuance of certificates of memberships in respect of such converted memberships; and

(e) any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of the business and affairs of the new cooperative.

(2) The proposition for the consolidation of the consolidating cooperatives into the new cooperative and the proposed articles of consolidation approved by the board of trustees of each consolidating cooperative shall then be submitted to a vote of the members thereof at any annual or special meeting thereof, the notice of which shall set forth full particulars concerning the proposed consolidation. The proposed consolidation and the proposed articles of consolidation shall be deemed to be approved upon the affirmative vote of not less than two-thirds of those members of each consolidating cooperative voting thereon at such meeting.

(3) Upon such approval by the members of the respective consolidating cooperatives, articles of consolidation in the form approved shall be executed on behalf of each consolidating cooperative by its president or vice-president and its seal shall be affixed thereto and attested by its secretary. The president or vice-president of each consolidating cooperative executing such articles of consolidation shall also make and annex thereto an affidavit stating that the provisions of this section were duly complied with by such cooperative.

(4) Such articles of consolidation and affidavits shall be submitted to the secretary of state for filing as provided in this chapter.

History: **En. Sec. 13, Ch. 172, L. 1939; R.C.M. 1947, 14-513; amd. Sec. 45, Ch. 174, L. 1983.**

Cross-References

Filings and fees, 35-18-501, 35-18-502.

35-18-403. Effect of merger or consolidation. The effect of consolidation or merger shall be as follows:

(1) The several cooperatives parties to the consolidation or merger shall be a single cooperative which, in the case of a consolidation, shall be the new cooperative provided for in the articles of consolidation and, in the case of

a merger, shall be that cooperative designated in the articles of merger as the surviving cooperative, and the separate existence of all cooperatives parties to the consolidation or merger, except the new or surviving cooperative, shall cease.

(2) Such new or surviving cooperative shall have all the rights, privileges, immunities, and powers and shall be subject to all the duties and liabilities of a cooperative organized under the provisions of this chapter and shall possess all the rights, privileges, immunities, and franchises, as well of a public as of a private nature, and all property, real and personal, applications for membership, all debts due on whatever account, and all other choses in action of each of the consolidating or merging cooperatives. Furthermore, all and every interest of or belonging or due to each of the cooperatives so consolidated or merged shall be taken and deemed to be transferred to and vested in such new or surviving cooperative without further act or deed, and the title to any real estate or any interest therein under the laws of this state vested in any such cooperative shall not revert or be in any way impaired by reason of such consolidation or merger.

(3) Such new or surviving cooperative shall thenceforth be responsible and liable for all of the liabilities and obligations of each of the cooperatives so consolidated or merged. Any claim existing or action or proceeding pending by or against any of such cooperatives may be prosecuted as if such consolidation or merger had not taken place, but such new or surviving cooperative may be substituted in its place.

(4) Neither the rights of creditors nor any liens upon the property of any of such cooperatives shall be impaired by such consolidation or merger.

(5) In the case of a consolidation, the articles of consolidation shall be deemed to be the articles of incorporation of the new cooperative. In the case of a merger, the articles of incorporation of the surviving cooperative shall be deemed to be amended to the extent, if any, that changes therein are provided for in the articles of merger.

History: **En. Sec. 15, Ch. 172, L. 1939; R.C.M. 1947, 14-515.**

35-18-404. Dissolution of cooperative which has not commenced business. (1) A cooperative which has not commenced business may dissolve voluntarily by delivering to the secretary of state articles of dissolution, executed on behalf of the cooperative by a majority of the incorporators, which shall state:

(a) the name of the cooperative;

(b) the address of its principal office;

(c) the date of its incorporation;

(d) that the cooperative has not commenced business;

(e) that the amount, if any, actually paid in on account of membership fees, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto and that all easements shall have been released to the grantors;

(f) that no debt of the cooperative remains unpaid; and

(g) that a majority of the incorporators elect that the cooperative be dissolved.

(2) Such articles of dissolution shall be submitted to the secretary of state for filing as provided in this chapter.

History: En. Sec. 18, Ch. 172, L. 1939; R.C.M. 1947, 14-518(a); amd. Sec. 46, Ch. 174, L. 1983.

Cross-References

Dissolution and liquidation of business corporations, Title 35, ch. 1, part 9.

Dissolution and liquidation of nonprofit corporations, Title 35, ch. 2, part 7.

Involuntary corporate dissolution, Title 35, ch. 6.

Dissolution and winding up of partnerships in general, Title 35, ch. 10, part 6.

Dissolution of limited partnerships, Title 35, ch. 12, part 12.

Sale or disposition of assets of cooperative associations, 35-15-506.

Sale or disposition of assets of cooperative agricultural marketing associations, 35-17-506.

Filings and fees, 35-18-501, 35-18-502.

35-18-405. Dissolution and winding up of cooperative which has commenced business. A cooperative which has commenced business may dissolve voluntarily and wind up its affairs in the following manner:

(1) The board of trustees shall first recommend that the cooperative be dissolved voluntarily, and thereafter the proposition that the cooperative be dissolved shall be submitted to the members of the cooperative at any annual or special meeting, the notice of which shall set forth such proposition. The proposed voluntary dissolution shall be deemed to be approved upon the affirmative vote of not less than two-thirds of all of the members of the cooperative.

(2) Upon such approval, a certificate of election to dissolve, hereinafter designated the "certificate", shall be executed on behalf of the cooperative by its president or vice-president and its corporate seal shall be affixed thereto and attested by its secretary or assistant secretary. The certificate shall state the name of the cooperative, the address of its principal office, the names and addresses of its trustees, and the total number of members who voted for and against the voluntary dissolution of the cooperative. The president or vice-president executing the certificate shall also make and annex thereto an affidavit stating that the provisions of this subsection were duly complied with. Such certificate and affidavit shall be submitted to the secretary of state for filing as provided in this chapter.

(3) Upon the filing of the certificate and affidavit by the secretary of state, the cooperative shall cease to carry on its business except insofar as may be necessary for the winding up thereof, but its corporate existence shall continue until articles of dissolution have been filed by the secretary of state.

(4) After the filing of the certificate and affidavit by the secretary of state, the board of trustees shall immediately cause notice of the winding up proceedings to be mailed to each known creditor and claimant and to be published once a week for 2 successive weeks in a newspaper of general circulation in the county in which the principal office of the cooperative is located.

(5) The board of trustees shall have full power to wind up and settle the affairs of the cooperative and shall proceed to collect the debts owing to the cooperative, convey and dispose of its property and assets, pay, satisfy, and discharge its debts, obligations, and liabilities, and do all other things required to liquidate its business and affairs and after paying or adequately providing for the payment of all its debts, obligations, and liabilities shall distribute the

remainder of its property and assets among its members in proportion to the aggregate patronage of each such member during the 7 years next preceding the date of such filing of the certificate or, if the cooperative shall not have been in existence for such period, during the period of its existence.

(6) When all debts, liabilities, and obligations of the cooperative have been paid and discharged or adequate provision shall have been made therefor and all of the remaining property and assets of the cooperative shall have been distributed to the members pursuant to the provisions of this section, the board of trustees shall authorize the execution of articles of dissolution, which shall thereupon be executed on behalf of the cooperative by its president or vice-president and its corporate seal shall be affixed thereto and attested by its secretary. Such articles of dissolution shall recite in the caption that they are executed pursuant to this chapter and shall state:

(a) the name of the cooperative;

(b) the address of the principal office of the cooperative;

(c) that the cooperative has heretofore delivered to the secretary of state a certificate of election to dissolve and the date on which the certificate was filed by the secretary of state in the records of his office;

(d) that all debts, obligations, and liabilities of the cooperative have been paid and discharged or that adequate provision has been made therefor;

(e) that all the remaining property and assets of the cooperative have been distributed among the members in accordance with the provisions of this section; and

(f) that there are no actions or suits pending against the cooperative. The president or vice-president executing the articles of dissolution shall also make and annex thereto an affidavit stating that the provisions of this subsection were duly complied with. Such articles of dissolution and affidavit, accompanied by proof of the publication required in this subsection, shall be submitted to the secretary of state for filing as provided in this chapter.

History: **En. Sec. 18, Ch. 172, L. 1939; R.C.M. 1947, 14-518(b); amd. Sec. 47, Ch. 174, L. 1983; amd. Sec. 2, Ch. 289, L. 1987.**

Cross-References

Dissolution and liquidation of business corporations, Title 35, ch. 1, part 9.

Dissolution and liquidation of nonprofit corporations, Title 35, ch. 2, part 7.

Involuntary corporate dissolution, Title 35, ch. 6.

Dissolution and winding up of partnerships in general, Title 35, ch. 10, part 6.

Dissolution of limited partnerships, Title 35, ch. 12, part 12.

Sale or disposition of assets of cooperative associations, 35-15-506.

Sale or disposition of assets of cooperative agricultural marketing associations, 35-17-506.

Filings and fees, 35-18-501, 35-18-502.

Part 5

Filings and Fees

35-18-501. Filings relative to incorporation, amendment, conversion, merger, consolidation, and dissolution — effect of filing — transmittal to county clerk. (1) Articles of incorporation, amendment, consolidation, merger, conversion, dissolution, as the case may be, when executed and accompanied by such affidavits as may be required by applicable provisions of this chapter, shall be presented to the secretary of state for filing in the records of his office. If the secretary of state shall find that the articles presented conform to the requirements of this chapter, he shall upon the payment of the fees as in this chapter provided file the articles so presented in the records of his office, and upon such filing, the incorporation, amendment, consolidation, merger, conversion, or dissolution provided for therein shall be in effect.

(2) The secretary of state, immediately upon the filing in his office of any articles pursuant to this chapter, shall transmit a certified copy thereof to the county clerk of the county in which the principal office of each cooperative or corporation affected by such incorporation, amendment, consolidation, merger, conversion, or dissolution shall be located. The clerk of any county, upon receipt of any such certified copy, shall file and index the same in the records of his office, but the failure of the secretary of state or of a clerk of a county to comply with the provisions of this section shall not invalidate such articles.

(3) The provisions of this section shall also apply to certificates of election to dissolve and affidavits of compliance executed pursuant to 35-18-405(2).

History: **En. Sec. 19, Ch. 172, L. 1939; R.C.M. 1947, 14-519; amd. Sec. 48, Ch. 174, L. 1983.**

Cross-References

Amendments of articles of incorporation of cooperative associations, 35-15-205.

Amendments of articles of incorporation of cooperative agricultural marketing associations, 35-17-203.

Amendments of articles of incorporation of rural cooperative utilities, 35-18-204.

35-18-502. Fees to be charged by secretary of state. The secretary of state shall charge and collect for:

(1) filing articles of incorporation and issuing a certificate of incorporation, $40;

(2) filing articles of amendment and issuing a certificate of amendment, $10;

(3) filing articles of consolidation or merger and issuing a certificate of consolidation or merger, $10;

(4) filing articles of conversion and issuing a certificate of conversion, $10;

(5) filing certificate of election to dissolve and issuing certificate of election to dissolve, $10;

(6) filing articles of dissolution and issuing certificate of dissolution, $10; and

(7) filing certificate of change of principal office and issuing certificate of change of office, $10.

History: **En. Sec. 27, Ch. 172, L. 1939; amd. Sec. 5, Ch. 117, L. 1961; R.C.M. 1947, 14-527.**

35-18-503. Annual fee to department of revenue — exemption from other taxes. Cooperatives and foreign corporations transacting business in this state pursuant to the provisions of this chapter shall pay annually on or before July 1, to the department of revenue a fee of $10 for each 100 persons or fractions thereof to whom electricity or telephone service is supplied within the state but, except as provided in 10-4-201, shall be exempt from all other excise and income taxes of whatsoever kind or nature.

History: **En. Sec. 28, Ch. 172, L. 1939; amd. Sec. 8, Ch. 80, L. 1957; R.C.M. 1947, 14-528; amd. Sec. 19, Ch. 635, L. 1985.**

Cross-References

Tax exempt property, Title 15, ch. 6, part 2.

Exempt securities, 30-10-104.

CHAPTER 19

RESERVED

CHAPTER 20

CEMETERY ASSOCIATIONS

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Chapter Cross-References

General corporate law — applicability, 35-1-103.

Montana Nonprofit Corporation Act — applicability, 35-2-103.

Morticians and funeral directors, Title 37, ch. 19.

Health and safety — death, Title 50, ch. 15, part 4.

Estates, Trusts, and Fiduciary Relationships, Title 72.

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Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.

Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.

Formation of religious corporations sole, Title 35, ch. 3, part 2.

Organization of professional service corporations, Title 35, ch. 4, part 2.

Formation and operation of business trusts, Title 35, ch. 5, part 2.

Formation of limited partnerships, Title 35, ch. 12, part 6.

Formation of mining partnerships, Title 35, ch. 13, part 1.

Formation, articles of incorporation, and bylaws of cooperative associations, Title 35, ch. 15, part 2.

Formation of agricultural associations, Title 35, ch. 16, part 2.

Formation of cooperative agricultural marketing associations, Title 35, ch. 17, part 2.

Formation, articles, and bylaws of rural cooperative utilities, Title 35, ch. 18, part 2.

Organization of mausoleum and columbarium authorities, Title 35, ch. 21, part 2.

35-20-101. Permissible purposes for association — first meeting — election of trustees. Any number of persons residing in any county in the state of Montana, not less than seven, who desire to form an association for the purpose of procuring and holding lands to be used exclusively for a cemetery or place of burial of the dead, may meet at such time and place as they or a majority of them agree upon and appoint a chairman and secretary by a vote of the majority of the persons present at the meeting and may proceed to form an association by agreeing upon a corporate name by which the association shall be known and by determining upon the number of trustees to manage the affairs of the association, which number shall not be less than three or more than nine. Thereupon they may proceed to elect by ballot the number of trustees so determined upon.

History: En. Sec. 1, Ch. 18, L. 1905; re-en. Sec. 4237, Rev. C. 1907; re-en. Sec. 6469, R.C.M. 1921; Cal. Civ. C. Secs. 608-616; re-en. Sec. 6469, R.C.M. 1935; R.C.M. 1947, 9-101.

35-20-102. Classification of trustees — staggered terms. The chairman and secretary of such meeting shall immediately after such election divide the trustees by lot into three classes, those in the first class to hold their office for 1 year; those in the second class, 2 years; and those in the third class, 3 years; but the trustees of each class may be reelected if they possess the qualifications hereinafter mentioned. Such meeting shall also determine on what day in each year the future annual election of trustees shall be held.

History: En. Sec. 2, Ch. 18, L. 1905; re-en. Sec. 4238, Rev. C. 1907; re-en. Sec. 6470, R.C.M. 1921; re-en. Sec. 6470, R.C.M. 1935; R.C.M. 1947, 9-102.

35-20-103. Document of incorporation — contents — filing. (1) The chairman and secretary of such meeting shall within 5 days after the holding of the same make a written certificate, which shall state:

(a) the names of the associates who attended such meeting;

(b) the corporate name of the association determined upon by a majority of the persons who met;

(c) the number of persons fixed upon to manage the concerns of the association;

(d) the names of the trustees chosen at the meeting and their classification;

(e) the day of the year fixed upon for the annual election of trustees and the manner of their election.

(2) In addition to provisions required in subsection (1), the document of incorporation may also contain provisions not inconsistent with law regarding liability as set forth in 35-1-202(2)(a)(v).

(3) Such certificate shall be signed by the chairman and secretary and acknowledged by them before some person authorized to take acknowledgments within the state of Montana. They shall cause such certificate so acknowledged to be recorded in the office of the county clerk and recorder of the county in which said meeting was held, and a certified copy of such certificate so recorded shall be filed with the secretary of state of the state of Montana, who shall thereupon issue his certificate therefor without charge.

History: **En. Sec. 3, Ch. 18, L. 1905; re-en. Sec. 4239, Rev. C. 1907; re-en. Sec. 6471, R.C.M. 1921; re-en. Sec. 6471, R.C.M. 1935; R.C.M. 1947; 9-103; amd. Sec. 7, Ch. 559, L. 1987.**

35-20-104. Effect of filing — powers of association — eminent domain. Whenever such certificate is duly acknowledged and recorded and filed as provided in the last section, the association mentioned therein shall be deemed legally incorporated and shall have the general powers and privileges of corporations with the right to sue and be sued and to continue perpetually and in addition thereto such corporations shall have the right and power to take private property for public use to be used exclusively for a cemetery or place of burial of the dead. Such power of eminent domain to be exercised under the provisions of Title 70, chapter 30.

History: **En. Sec. 4, Ch. 18, L. 1905; re-en. Sec. 4240, Rev. C. 1907; amd. Sec. 1, Ch. 99, L. 1911; re-en. Sec. 6472, R.C.M. 1921; re-en. Sec. 6472, R.C.M. 1935; R.C.M. 1947, 9-104.**

Part 2

Operations Generally — Trustees of Association

Part Cross-References

Directors and officers of business corporations, Title 35, ch. 1, part 4.

Directors and officers of nonprofit corporations, Title 35, ch. 2, part 4.

Shareholders, directors, and officers of cooperative associations, Title 35, ch. 15, part 3.

Members and directors of agricultural associations, Title 35, ch. 16, part 3.

Members, directors, and officers of cooperative agricultural marketing associations, Title 35, ch. 17, part 3.

Members, trustees, and officers of rural cooperative utilities, Title 35, ch. 18, part 3.

Governing board of mausoleum and columbarium associations, 35-21-205.

35-20-201. Local government approval prior to commencing operations. Before commencing operations under this chapter, an association shall comply with the planning and zoning requirements of the city or county or the city and county jointly, as may be required by law, and shall demonstrate to such unit or units of local government that a need exists for the proposed cemetery and that the association has the financial capability required to operate a cemetery in a satisfactory manner.

History: En. 9-111.1 by Sec. 2, Ch. 98, L. 1974; R.C.M. 1947, 9-111.1.

Cross-References

Local government involvement — cemeteries, Title 7, ch. 35, part 1.

35-20-202. Bylaws. The trustees of any association incorporated agreeably to the provisions of this chapter may enact bylaws for regulating the affairs of such corporation, not inconsistent with the laws of this state.

History: En. Sec. 5, Ch. 18, L. 1905; re-en. Sec. 4241, Rev. C. 1907; re-en. Sec. 6473, R.C.M. 1921; re-en. Sec. 6473, R.C.M. 1935; R.C.M. 1947, 9-105.

35-20-203. Vacancies in membership. All vacancies occurring by death or otherwise in the membership of any cemetery association organized under this chapter shall be filled by a vote of the surviving or remaining associates named in the certificate of association. All persons so elected to fill any such vacancy shall be entitled to vote at the election of trustees and be eligible to the office of trustee of said incorporation and shall have and be entitled to the same rights, powers, and privileges as the original associates named in said certificate.

History: En. Sec. 6, Ch. 18, L. 1905; re-en. Sec. 4242, Rev. C. 1907; re-en. Sec. 6474, R.C.M. 1921; re-en. Sec. 6474, R.C.M. 1935; R.C.M. 1947, 9-106.

35-20-204. Annual election — time — voting. (1) The annual election for trustees to supply the place of those whose term of office expires shall be held on the day mentioned in the certificate of incorporation and at such hour and place as the trustees direct. The trustees chosen at any election after the first shall hold their offices for 3 years and until others are chosen to succeed them.

(2) Such election shall be by ballot, and every person who is the proprietor of a lot in the cemetery of the association or, if there is more than one proprietor of any such lot, then such one of the proprietors as a majority of the joint proprietors shall designate to represent such lot or any person who is named as an associate in said certificate may vote at such election, and the persons receiving the highest number of votes given at such election shall be declared elected trustees.

History: En. Sec. 13, Ch. 18, L. 1905; re-en. Sec. 4249, Rev. C. 1907; re-en. Sec. 6481, R.C.M. 1921; re-en. Sec. 6481, R.C.M. 1935; R.C.M. 1947, 9-113.

35-20-205. Qualifications of trustees — notice of election — vacancies. (1) In all elections after the first, the trustees shall be chosen from among the associates named in said certificate of incorporation or their successors.

(2) Public notice of every annual election shall be given in such manner as the bylaws of the association prescribe.

(3) The trustees shall have the power to fill any vacancy in their number occurring during the term of office for which any trustee was elected.

History: En. Sec. 14, Ch. 18, L. 1905; re-en. Sec. 4250, Rev. C. 1907; re-en. Sec. 6482, R.C.M. 1921; re-en. Sec. 6482, R.C.M. 1935; R.C.M. 1947, 9-114.

35-20-206. Time for election if not held at time fixed in document of incorporation. If the annual election is not held on the day fixed in the certificate of incorporation, the trustees have the power to appoint another day not more than 60 days thereafter and shall give public notice of the time and place, at which time the election may be held with like effect as if held on the day fixed in said certificate. The terms of office of the trustees chosen at such election shall expire at the same time they would have done had they been chosen on the day fixed in the certificate of incorporation.

History: En. Sec. 15, Ch. 18, L. 1905; re-en. Sec. 4251, Rev. C. 1907; re-en. Sec. 6483, R.C.M. 1921; re-en. Sec. 6483, R.C.M. 1935; R.C.M. 1947, 9-115.

35-20-207. Annual report of trustees — duty of county attorney. (1) The trustees at each annual meeting shall make a report in writing, which report shall be signed by at least a majority of the members of such board and shall contain a statement of their doings and of the affairs of the association and an account of the receipts and disbursements during the year preceding. Such report must be duly verified and filed in the office of the clerk of the district court. Such reports shall be noticed for hearing and heard in the same manner as reports of administrators in estates of deceased persons.

(2) It is hereby made the duty of the county attorney of the county in which cemetery is situated to act without charge as the legal advisor of all officers of a cemetery association and to prepare and present any and all reports required to be made by such officers.

History: En. Sec. 16, Ch. 18, L. 1905; re-en. Sec. 4252, Rev. C. 1907; re-en. Sec. 6484, R.C.M. 1921; re-en. Sec. 6484, R.C.M. 1935; amd. Sec. 2, Ch. 98, L. 1939; R.C.M. 1947, 9-116.

Cross-References

Annual report — accounting requirement, 35-20-207.

Estates, Title 72.

35-20-208. Trustees to manage — quorum — officers — bond of treasurer. (1) The affairs and property of the association shall be managed by the trustees, a majority of whom is a quorum for the transaction of business.

(2) The trustees shall annually appoint from among their number a president, vice-president, secretary, and treasurer who shall hold their offices during the pleasure of the board of trustees. The trustees may require the treasurer to give security for the faithful performance of the duties of his office.

History: En. Sec. 7, Ch. 18, L. 1905; re-en. Sec. 4243, Rev. C. 1907; re-en. Sec. 6475, R.C.M. 1921; re-en. Sec. 6475, R.C.M. 1935; amd. Sec. 1, Ch. 62, L. 1977; R.C.M. 1947, 9-107.

35-20-209. Duties of secretary — record of interments. The secretary shall perform all the duties of a secretary of a corporation and shall, in addition, keep a record of interments in which he shall enter as correctly and carefully as may be the name, age, sex, nativity, and cause of death with date of burial of every person interred in such cemetery, which facts he shall procure from such friends or relatives of the deceased or undertaker as give order for such interment at the time thereof or, in case deceased is a pauper, a stranger, or criminal, from the coroner, county physician, overseer of the poor, or other public officer directing the burial of the same.

History: En. Sec. 8, Ch. 18, L. 1905; re-en. Sec. 4244, Rev. C. 1907; re-en. Sec. 6476, R.C.M. 1921; re-en. Sec. 6476, R.C.M. 1935; R.C.M. 1947, 9-108.

Cross-References

Secretarial recording of appointments, 35-20-308.

Secretary of association as secretary of trustee or board of trustees, 35-20-309.

Burial of corpse — county coroner, 44-3-403.

35-20-210. Record of interments open to public — summary to health officers. (1) Such register or record of interment shall be open to the inspection of the public.

(2) The secretary of every cemetery association shall furnish to the health officers of any corporate town or city or county within the state, when demanded by them, an accurate summary of all the interments during any particular year.

History: En. Sec. 9, Ch. 18, L. 1905; re-en. Sec. 4245, Rev. C. 1907; re-en. Sec. 6477, R.C.M. 1921; re-en. Sec. 6477, R.C.M. 1935; R.C.M. 1947; 9-109.

35-20-211. Penalty for failure to keep record. Any secretary who neglects or refuses to carefully keep such register of burials and record all interments therein, as herein provided, shall be subject to a fine for such offense not exceeding $25.

History: En. Sec. 10, Ch. 18, L. 1905; re-en. Sec. 4246, Rev. C. 1907; re-en. Sec. 6478, R.C.M. 1921; re-en. Sec. 6478, R.C.M. 1935; R.C.M. 1947, 9-110.

Cross-References

Duties of secretaries, 35-20-308, 35-20-309.

35-20-212. Authority to acquire land — survey required. (1) Any association incorporated agreeably to the provisions of this chapter may take by purchase or gift and hold, within the county in which the certificate of their incorporation is recorded, land to be held and occupied exclusively for a cemetery for the burial of the dead and for purposes necessary or proper thereto.

(2) Such land or such portion thereof as may from time to time be required for that purpose shall be surveyed and divided into lots of such size as the trustees may direct with such avenues, alleys, and walks as the trustees deem proper. A map of such survey shall be filed and recorded in the office of the county clerk and recorder of the county in which the lands lie, without any fees therefor.

History: En. Sec. 11, Ch. 18, L. 1905; re-en. Sec. 4247, Rev. C. 1907; re-en. Sec. 6479, R.C.M. 1921; re-en. Sec. 6479, R.C.M. 1935; amd. Sec. 1, Ch. 98, L. 1939; amd. Sec. 1, Ch. 78, L. 1947; amd. Sec. 1, Ch. 98, L. 1974; R.C.M. 1947, 9-111(part).

35-20-213. Sale of lots. After such map is filed in the office of the county clerk and recorder as aforesaid, the trustees may sell and convey the lots as designated on such map upon terms and subject to such conditions and restrictions, to be inserted in or annexed to the conveyances, as the trustees shall prescribe. Every conveyance of any such lots shall be expressly for burial purposes and no other and shall be in the corporate name of the association, signed by the president and secretary thereof.

History: En. Sec. 12, Ch. 18, L. 1905; re-en. Sec. 4248, Rev. C. 1907; re-en. Sec. 6480, R.C.M. 1921; re-en. Sec. 6480, R.C.M. 1935; R.C.M. 1947, 9-112.

35-20-214. Use of proceeds from sale of lots. The proceeds arising from the sale of lots in such cemetery shall be applied to the payment of any debts incurred by the cemetery association in:

(1) the purchase of cemetery grounds and property;

(2) fencing, improving, and embellishing such grounds and avenues leading thereto;

(3) the erection, conduct, repair, or preservation of any structure to be used as a crematory or the creation, maintenance, and operation of a department for the interment of the dead and in defraying the necessary expenses in the management and care thereof and for no other purposes.

History: **En. Sec. 17, Ch. 18, L. 1905; re-en. Sec. 4253, Rev. C. 1907; amd. Sec. 1, Ch. 65, L. 1919; re-en. Sec. 6485, R.C.M. 1921; re-en. Sec. 6485, R.C.M. 1935; R.C.M. 1947, 9-117.**

Cross-References

Fund required, 35-20-301.

Use of fund income, 35-20-312.

35-20-215. Use of gifted property — gratuitous city water. (1) Any association incorporated agreeably to the provisions of this chapter may also take by gift and hold personal property and may sell the same and apply the proceeds thereof to the care, maintenance, and embellishment of said cemetery, but for no other purpose. All real and personal estate which shall have been given or granted to any such association for the maintenance of any monument, the keeping in good order, or the embellishment of any lot or ground situated within the inclosure of such an association shall remain forever to the uses for which the same shall have been given or granted, according to the true intent of the grantor.

(2) Any city or town in or near which a cemetery is maintained under the provisions of this chapter may furnish water to be used within such cemetery and for its maintenance and beautification free of charge to such cemetery association if such city or town shall so elect.

History: **En. Sec. 11, Ch. 18, L. 1905; re-en. Sec. 4247, Rev. C. 1907; re-en. Sec. 6479, R.C.M. 1921; re-en. Sec. 6479, R.C.M. 1935; amd. Sec. 1, Ch. 98, L. 1939; amd. Sec. 1, Ch. 78, L. 1947; amd. Sec. 1, Ch. 98, L. 1974; R.C.M. 1947, 9-111(part).**

35-20-216. Inalienability of lots. (1) Whenever the lands of such an association are laid out in lots and the lots or any of them are transferred to individual proprietors and there has been an interment in a lot so transferred, that lot from the time of such interment shall forever be inalienable and shall, upon the death of the proprietor, descend to his heirs. However, any one or more of those heirs may release to any other of the heirs his or their interest in the lot. A copy of the release shall be filed with the secretary of the association or with the county clerk and recorder of the county within which the lot is situated. Except by consent of all persons having an interest in the lot, the body of a deceased person may not be interred in that lot unless it is the body of:

(a) a person having an interest in that lot at the time of his decease;

(b) a relative of some person having such interest;

(c) the wife or husband of such a person; or

(d) a relative of such husband or wife.

(2) However, the person or persons in whom the title to such lot or lots or part thereof is vested may at any time sell, convey, and release the lots or parts thereof to the cemetery association maintaining the cemetery in which the lots are situated. A copy of the instruments of such conveyance shall be filed in the same manner provided for release from one heir to

another. The cemetery association may use any funds under its control for such purposes and shall hold and may convey such lots or parts thereof to other purchasers in the same manner and with the same effect as it holds and conveys any other of its cemetery lots. This proviso does not allow or authorize the conveyance to the cemetery association of a piece of ground in which the body of a deceased person lawfully interred actually remains interred at the time of the attempted conveyance.

History: En. Sec. 19, Ch. 18, L. 1905; re-en. Sec. 4255, Rev. C. 1907; re-en. Sec. 6487, R.C.M. 1921; re-en. Sec. 6487, R.C.M. 1935; amd. Sec. 2, Ch. 62, L. 1977; R.C.M. 1947, 9-119.

35-20-217. Exemption from taxation and execution — no road construction through cemetery. The cemetery lands and property of any association formed pursuant to this chapter are exempt from all public taxes and assessments and not liable to be sold on execution or applied in payment of debts of any individual proprietors; but the proprietors of lots in such cemetery, their heirs or legal representatives may hold the same exempt therefrom so long as the same remain appropriated to the use of a cemetery, and during that time no street or road shall be laid through such cemetery or any part of the lands held by such association for the purpose aforesaid without the consent of the trustees of such association.

History: En. Sec. 18, Ch. 18, L. 1905; re-en. Sec. 4254, Rev. C. 1907; re-en. Sec. 6486, R.C.M. 1921; re-en. Sec. 6486, R.C.M. 1935; R.C.M. 1947, 9-118.

Cross-References

Tax exempt property, Title 15, ch. 6, part 2.

Part 3

Permanent Care and Improvement Fund Trustees of Fund

35-20-301. Fund required. Any association formed under the provisions of this chapter or any corporation formed before February 16, 1905, under the laws of this state, which shall have established and be maintaining a cemetery, shall provide in the manner set forth in this chapter for the establishment and maintenance of a permanent fund the income of which shall be devoted to the care, maintenance, and improvement of such cemetery, which fund shall be known as the "permanent care and improvement fund" of such cemetery association.

History: En. Sec. 20, Ch. 18, L. 1905; re-en. Sec. 4256, Rev. C. 1907; amd. Sec. 1, Ch. 128, L. 1909; re-en. Sec. 6488, R.C.M. 1921; re-en. Sec. 6488, R.C.M. 1935; R.C.M. 1947, 9-120.

35-20-302. Trustees of fund — appointment by district court — qualifications — powers. (1) Whenever moneys to the amount of $100 shall have been received by such corporation or association, formed, before or after February 16, 1905, either from the sale of lots or from direct payments of such corporation or association toward such a fund by lot owners or otherwise, the trustees of such association shall immediately make application to the judge of the district court for the judicial district in which the cemetery for which such trust fund exists for the appointment of a trustee or of a board of trustees of such fund. The judge of such court shall thereupon appoint a trustee or a board of trustees from a list submitted to him by the trustees of such association. Such trustee or such board shall consist of not less than one or more than five persons, the exact number to rest in the discretion of the trustees of said association.

(2) Such trustee or the members of such board of trustees of such funds must be citizens and freeholders of the state of Montana during all the time they exercise the powers of such trust. Upon the election, appointment, and qualification as hereinafter provided of the trustees of such fund, all of the title to the funds included in said trust and all of the rights, powers, authorities, franchises, and trusts of whatsoever thereunto appertaining shall at once vest in him or them; or, in case of the failure of any of those so chosen and appointed to qualify within 30 days after their appointment, the same shall vest in the one or more who shall qualify. In case of the failure of any of those so chosen and appointed so to qualify within such time, a vacancy shall exist and the judge of said district court shall forthwith appoint from a list submitted to him by the trustees of such association some person possessing the above qualifications to fill vacancy or vacancies in said board of trustees of such fund; provided, however, that trustees of such fund heretofore appointed by such cemetery associations or district courts shall continue to hold their office as such trustees until terminated in one of the manners in this chapter provided.

(3) The board of trustees shall also have the power and authority to nominate any bank which is authorized to act as a trust company in Montana under state or federal law to be trustee of such trust fund. And in that event the district court shall make appointment of such nominee which shall serve in such capacity without bond but shall be required to make all reports and discharge all the duties and obligations required of individual trustees.

History: En. Sec. 21, Ch. 18, L. 1905; re-en. Sec. 1990, Rev. C. 1907; re-en. Sec. 2, Ch. 128, L. 1909; re-en. Sec. 6489, R.C.M. 1921; amd. Sec. 1, Ch. 68, L. 1925; re-en. Sec. 6489, R.C.M. 1935; amd. Sec. 3, Ch. 98, L. 1939; R.C.M. 1947, 9-121.

Cross-References

Special statutory proceedings, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

Mausoleums and columbariums — bank or trust company as trustee, 35-21-610.

Trust administration, Title 72, ch. 34.

35-20-303. Trustees of fund — term. The tenure of office of the trustee or trustees of such fund shall be for the term of 3 years unless they permanently remove from the state of Montana or are removed from office by the judge of said district court for good cause shown or their tenure is otherwise terminated as in this chapter provided.

History: En. Sec. 22, Ch. 18, L. 1905; re-en. Sec. 4258, Rev. C. 1907; re-en. Sec. 6490, R.C.M. 1921; amd. Sec. 2, Ch. 68, L. 1925; re-en. Sec. 6490, R.C.M. 1935; amd. Sec. 4, Ch. 98, L. 1939; R.C.M. 1947, 9-122.

35-20-304. Trustees of fund — bond required — renewal of bond — deposit with county treasurer. (1) Before exercising or having any of the powers, duties, rights, titles, authorities, or franchises appertaining to such trust or to such trusteeship, each person chosen to be a trustee of such fund shall give to the cemetery association for which the trust is maintained a bond in a sum equaling at least 1 ⅓ times the value of the property on hand at the time of giving such bond, with good and sufficient sureties thereto, who shall justify in the aggregate in at least double the amount of such bond, the same to be conditioned for the due and faithful performance of his trust until July 1 of the next even-numbered year after the year in which such bond shall be given and until such trustee shall give a new bond as hereinafter provided.

(2) Upon July 1 in each even-numbered year, each trustee shall give a new bond conditioned in the same way, the amount thereof to be determined by the same rule, and with sureties as above provided.

(3) Any failure so to renew bonds within 30 days after the time hereinbefore provided shall be a sufficient ground for removal of any trustee within the discretion of the district court. Such bonds shall all be approved by a judge of the district court for the judicial district in which the cemetery for such trust exists or some part thereof shall be situated and shall be filed with the clerk of the district court of the county in which such cemetery is located.

(4) The value of the property on hand may be reduced for the purpose of fixing the amount of the bond in an amount equal to the value of the money, bonds, and securities which the trustee or trustees of the permanent care and improvement fund may elect to and do deposit with the county treasurer as hereinafter provided.

(5) The trustee or trustees of such fund may deposit such money, bonds, and securities as he or they see fit with the county treasurer of the county in which said cemetery or some part thereof is situated for safekeeping, and it is the duty of the county treasurer to receive and safely keep all such moneys, bonds, and securities and pay them out or deliver them up, or any part thereof, upon the order of such trustee or a majority of the trustees, when countersigned by a judge of said judicial district and not otherwise, and to keep an account with such trustee or trustees of all such transactions. For the safekeeping and payment and delivery of all such moneys, bonds, and securities as herein provided, the treasurer and his sureties are liable upon his official bond.

History: En. Sec. 23, Ch. 18, L. 1905; re-en. Sec. 4259, Rev. C. 1907; re-en. Sec. 6491, R.C.M. 1921; re-en. Sec. 6491, R.C.M. 1935; amd. Sec. 5, Ch. 98, L. 1939; amd. Sec. 1, Ch. 12, L. 1947; R.C.M. 1947, 9-123.

35-20-305. Vacancies — how filled. In the case of the death, resignation, disability, or removal of any member or members of said board of trustees of said fund, the judge of said district court shall forthwith appoint a trustee or trustees to fill such vacancy or vacancies in the same manner as above provided in the case of an original vacancy.

History: En. Sec. 24, Ch. 18, L. 1905; re-en. Sec. 4260, Rev. C. 1907; re-en. Sec. 6492, R.C.M. 1921; amd. Sec. 3, Ch. 68, L. 1925; re-en. Sec. 6492, R.C.M. 1935; R.C.M. 1947, 9-124.

35-20-306. All powers vest in survivors until vacancy filled — succession to powers. (1) In case of the death, resignation, disability, or removal of any one or more of the trustees of such fund, all the rights, titles, powers, authorities, franchises, and trusts whatsoever existing in such trustee at the time of such death, resignation, disability, or removal shall at once without further act or conveyance vest in the survivor or survivors until the vacancy or vacancies so occasioned shall be filled, when the same shall in the same manner vest in the board as so reconstituted.

(2) All newly appointed trustees shall at once upon qualification succeed to an equal share in all the rights, titles, powers, authorities, franchises, and

trusts belonging to such board, and the same shall always be vested in the members of such board as actually constituted.

History: En. Sec. 25, Ch. 18, L. 1905; re-en. Sec. 4261, Rev. C. 1907; re-en. Sec. 6493, R.C.M. 1921; re-en. Sec. 6493, R.C.M. 1935; R.C.M. 1947, 9-125.

Cross-References

Trust administration, Title 72, ch. 34.

35-20-307. Title to funds vest in court when no application made for appointment or entire board is vacant — appointment by court — accounting. (1) In the case of the failure of the trustees of such an association to make application to the judge of said district court for the appointment of a board of trustees of such fund, as provided in 35-20-302, or in the case of the death, removal, resignation, or disability of all of the members of such board, the rights, titles, interests, authorities, powers, franchises, and trusts, until the appointment and qualification of a new board of trustees of such fund, shall vest in the district court of the county in which such cemetery, or the greater part thereof, shall be situated.

(2) In such cases such trustee or such board of trustees of such fund shall be appointed by the district court of said county upon application of any person interested and upon notice of other persons interested, as the judge of said court may order. The trustee or trustees appointed by the judge of said court under the provisions of this section shall have the same rights, powers, authorities, and franchises as the trustee or trustees appointed under any other sections of this chapter.

(3) Such trustee or such board of trustees must annually, or more often if so required by order of such court, file in the office of the clerk of the district court of the county where such cemetery is situated a duly verified account showing a detailed statement of all moneys collected, of all securities on hand, together with all moneys disbursed during the preceding year. Any interested party may apply to the district court for an order requiring such trustee or such board of trustees to make such an accounting at any time.

(4) Any owner of an interest in any lot in the cemetery cared for by such trust, any trustee of the cemetery association, and any trustee of the trust fund shall have the right to make any application to the court provided for in this chapter.

History: En. Sec. 26, Ch. 18, L. 1905; re-en. Sec. 4262, Rev. C. 1907; amd. Sec. 3, Ch. 128, L. 1909; re-en. Sec. 6494, R.C.M. 1921; amd. Sec. 4, Ch. 68, L. 1925; re-en. Sec. 6494, R.C.M. 1935; amd. Sec. 6, Ch. 98, L. 1939; R.C.M. 1947, 9-126.

35-20-308. Recording appointments of trustees. All instruments of appointment of a trustee or of a board of trustees of such funds shall be recorded with the secretary of the association establishing the fund and shall also be filed in the office of the clerk of the district court in the county in which such association is located.

History: En. Sec. 27, Ch. 18, L. 1905; re-en. Sec. 4263, Rev. C. 1907; re-en. Sec. 6495, R.C.M. 1921; re-en. Sec. 6495, R.C.M. 1935; amd. Sec. 7, Ch. 98, L. 1939; R.C.M. 1947, 9-127.

Cross-References

Penalty for failure to keep record, 35-20-211.

35-20-309. Secretary of board. The secretary of the cemetery association shall act as secretary of such trustee or as secretary of such board of trustees of such fund and shall keep a full record of their proceedings.

History: En. Sec. 33, Ch. 18, L. 1905; re-en. Sec. 4269, Rev. C. 1907; re-en. Sec. 6501, R.C.M. 1921; re-en. Sec. 6501, R.C.M. 1935; amd. Sec. 10, Ch. 98, L. 1939; R.C.M. 1947, 9-133.

Cross-References

Penalty for failure to keep record, 35-20-211.

35-20-310. Transfer of moneys received by association to trustees of fund. (1) From and after February 16, 1905, the trustees of such cemetery association as are mentioned in 35-20-302 shall provide by resolution, spread upon the minutes of such association, for the transfer to the trustees of such permanent care and improvement fund of not less than 15% of the moneys received from the sale of cemetery lots by said association, together with all moneys theretofore or thereafter received from the owners of lots for the care of such lots. Such transfer of any such funds then on hand shall then and there be made. Such transfers shall be made thereafter quarterly upon the first days of January, April, July, and October of each year to the trustees of such fund.

(2) If at any time there shall remain in the hands of such association unexpended money, over and above the liabilities of the association, the board of trustees of such association may by a two-thirds vote appropriate the whole or any portion of such unexpended moneys to such permanent care and improvement fund.

History: En. Sec. 28, Ch. 18, L. 1905; re-en. Sec. 4264, Rev. C. 1907; amd. Sec. 4, Ch. 128, L. 1909; re-en. Sec. 6496, R.C.M. 1921; re-en. Sec. 6496, R.C.M. 1935; amd. Sec. 3, Ch. 98, L. 1974; R.C.M. 1947, 9-128.

35-20-311. Principal of fund to be reserved — income to be turned over to treasurer. The principal of such fund shall in all cases remain intact and inviolate. But the trustees of such fund shall on January 1 and July 1 in each year turn over to the treasurer of such association all accrued income arising from such fund, and the receipt of such treasurer therefor shall be a sufficient voucher in the hands of such trustees.

History: En. Sec. 29, Ch. 18, L. 1905; re-en. Sec. 4265, Rev. C. 1907; re-en. Sec. 6497, R.C.M. 1921; re-en. Sec. 6497, R.C.M. 1935; R.C.M. 1947, 9-129.

35-20-312. Use of income of fund. (1) The income of that portion of such fund received from the sales of lots shall be used in the discretion of the trustees of such association solely for the care, maintenance, and improvement of such cemetery, its grounds, roads, walks, and avenues leading thereto, except as herein provided.

(2) The income from such portion of such funds as shall have been paid in by lot owners for the care of specific lots shall be segregated from the other portion, each lot being credited with its respective income, and shall be used solely for the care of such lots, respectively. In the event of any portion of the income so paid ever remaining unexpended for such purposes for 1 year after its being so paid over to the treasurer of such association, it shall be returned to the trustees of such fund by said treasurer and become a part of the principal.

(3) After February 16, 1905, all cemetery corporations shall distinctly specify in all conveyances of lots therein the percentage of the price received

therefor to be transferred under the provisions of this chapter to the permanent care and improvement fund of such corporation and also such further sum if any there be paid by the purchaser for the permanent care of the specific lot or lots thereby conveyed so to be transferred as hereinbefore provided.

History: En. Sec. 30, Ch. 18, L. 1905; re-en. Sec. 4266, Rev. C. 1907; amd. Sec. 5, Ch. 128, L. 1909; re-en. Sec. 6498, R.C.M. 1921; re-en. Sec. 6498, R.C.M. 1935; R.C.M. 1947, 9-130.

35-20-313. Investment of fund. The principal of such fund may be invested in the way in which public employees' retirement funds are permitted to be invested in the state of Montana as prescribed by 17-6-211 and not otherwise. Each investment made by the trustee or by the board of trustees shall be subject to the approval of the board of trustees of the cemetery association.

History: En. Sec. 31, Ch. 18, L. 1905; re-en. Sec. 4267, Rev. C. 1907; re-en. Sec. 6499, R.C.M. 1921; re-en. Sec. 6499, R.C.M. 1935; amd. Sec. 8, Ch. 98, L. 1939; amd. Sec. 4, Ch. 98, L. 1974; R.C.M. 1947, 9-131.

35-20-314. Compensation of trustees of fund. The trustee or the members of the board of trustees of such permanent care and improvement fund shall receive such compensation as may be agreed upon between such trustee or between such board of trustees of such permanent care and improvement fund on the one hand and the board of trustees of the cemetery association on the other. The fees of such trustee or of the members of the board of trustees shall be paid out of the general fund of the cemetery association until such trust fund shall reach $10,000 and thereafter the same shall be paid out of the income of such fund.

History: En. Sec. 32, Ch. 18, L. 1905; re-en. Sec. 4268, Rev. C. 1907; re-en. Sec. 6500, R.C.M. 1921; re-en. Sec. 6500, R.C.M. 1935; amd. Sec. 9, Ch. 98, L. 1939; amd. Sec. 5, Ch. 98, L. 1974; R.C.M. 1947, 9-132.

35-20-315. Annual report of trustees of fund. The trustee or the board of trustees of such fund shall annually on January 1 make their report of the condition of such trust fund to the trustees of the cemetery association and also to the district court as hereinbefore provided. Such reports shall always be kept by the secretary of such association and by the clerk of the district court and be open to the inspection of any person owning an interest in any lot in the cemetery cared for by such fund.

History: En. Sec. 34, Ch. 18, L. 1905; re-en. Sec. 4270, Rev. C. 1907; re-en. Sec. 6502, R.C.M. 1921; re-en. Sec. 6502, R.C.M. 1935; amd. Sec. 11, Ch. 98, L. 1939; R.C.M. 1947, 9-134.

CHAPTER 21

MAUSOLEUM AND COLUMBARIUM AUTHORITIES

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Chapter Cross-References

Morticians and funeral directors, Title 37, ch. 19.

Health and safety — death, Title 50, ch. 15, part 4.

Estates, Trusts, and Fiduciary Relationships, Title 72.

Part 1

General

35-21-101. Short title. This chapter shall be known as the "Mausoleum-Columbarium Act".

History: En. Sec. 1, Ch. 35, L. 1949; R.C.M. 1947, 9-501(part).

35-21-102. Definitions. For the purposes of this chapter, certain words used herein shall have the following meanings:

(1) "Columbarium" means a structure, room, or other space in a permanent building or outdoor structure containing niches for permanent inurnment of cremated remains in a place used or intended to be used and dedicated for interment purposes.

(2) "Cremated remains" means human remains after cremation in a crematory.

(3) "Cremation" means the reduction of the body of a deceased person to cremated remains in a crematory.

(4) "Crematory" means a building or structure containing one or more retorts for the reduction of bodies of deceased persons to cremated remains.

(5) "Crypt" or "vault" means a space in a mausoleum of sufficient size used or intended to be used to entomb the uncremated human remains.

(6) "Directors" or "governing body" means the board of directors, board of trustees, or other governing body of a mausoleum-columbarium authority.

(7) "Entombment" means the placement of human remains in a crypt or vault.

(8) "Human remains" or "remains" means the body of a deceased person and includes the body in any stage of decomposition and cremated remains.

(9) "Interment" means the disposition of human remains by cremation and inurnment or entombment in a place used or intended to be used and dedicated for interment purposes.

(10) "Interment space" means any space in a crypt, vault, or niche of sufficient size for the entombment or inurnment of the remains of one human being.

(11) "Inurnment" means placing cremated remains in an urn or other permanent container and placing it in a niche.

(12) "Mausoleum" means a permanent building or outdoor structure suitable for the entombment of human remains in crypts or vaults in a place used or intended to be used and dedicated for interment purposes.

(13) "Mausoleum business", "columbarium business", and "mausoleum--columbarium business or purposes" are used interchangeably and mean any

and all business and purposes requisite to, necessary for, or incident to establishing, maintaining, operating, improving, or conducting a mausoleum, columbarium, or mausoleum-columbarium, interring human remains therein, and the care, preservation, and embellishment of such property.

(14) "Mausoleum-columbarium" means a building or structure containing both a mausoleum and a columbarium.

(15) "Mausoleum-columbarium authority" means any corporation, whether for profit or not for profit, owning, controlling, or operating lands, buildings, or structures used or intended to be used and dedicated for interment purposes by entombment or inurnment but shall not refer to any corporation for profit or not for profit or any association, corporation sole, or other person owning or controlling cemetery lands or property including mausoleums and/or columbariums where interment is also made by ground burial.

(16) "Niche" means a space in a columbarium or urn garden used or intended to be used for inurnment of cremated human remains.

(17) "Plot" or "interment plot" means space in a mausoleum or columbarium used or intended to be used for the interment of human remains. Such terms include and apply to one or more than one adjoining crypts or vaults or one or more than one adjoining niches.

(18) "Plot owner" or "owner" or "proprietor" means any person in whose name an interment plot stands of record as owner in the office of a mausoleum-columbarium authority.

(19) "Temporary receiving vault" means a vault used or intended to be used for the temporary placement of human remains.

(20) "Urn garden" means a permanent outdoor structure containing niches of stone or reinforced concrete suitable for and used or intended to be used for inurnment of cremated remains in a place used or intended to be used and dedicated for interment purposes. Wherever the context shall permit "urn garden" shall be deemed to be included in "columbarium".

History: En. Secs. 1 thru 19, Ch. 35, L. 1949; R.C.M. 1947, 9-501(part), 9-502 thru 9-519.

35-21-103. Exemptions and limitations on applicability of chapter. (1) The provisions of this chapter relating to private mausoleums and columbariums do not apply to any of the following:

(a) any religious corporation, church, religious society or denomination, corporation sole administering temporalities of any church or religious society or denomination, or any cemetery, mausoleum, or columbarium organized, controlled, and operated by any of them;

(b) any county, town, or city cemetery, mausoleum, or columbarium.

(2) No condition or section or provision of this chapter shall or may be so construed or interpreted as to apply to any act or in any way pertain to or affect any Montana mausoleum corporation in existence on July 1, 1949, operating under Montana charter dated prior to the year 1920.

(3) The provisions of this chapter do not affect the corporate existence or rights or powers of any cemetery corporation organized under any law of the state of Montana in which a mausoleum, columbarium, or crematory or combination thereof shall be situated, maintained, or operated in conjunction with a cemetery for the burial of dead human remains by ground interment. This chapter and all its provisions shall be applicable to and only to mausoleums

and/or columbariums owned, operated, or controlled by a mausoleum-columbarium authority organized and governed as herein provided and owning, controlling, or operating lands, buildings, structures, etc., solely for the entombment and inurnment of human remains.

History: (1), (2)En. Sec. 122, Ch. 35, L. 1949; Sec. 9-1014, R.C.M. 1947; (3)En. Sec. 38, Ch. 35, L. 1949; Sec. 9-703, R.C.M. 1947; R.C.M. 1947, 9-703, 9-1014.

Cross-References

Corporate powers enlarged, 35-21-203.

Part 2

Organization and Regulation of Business

Part Cross-References

General corporate powers — applicability, 35-1-103.

Formation, articles of incorporation, and bylaws of business corporations, Title 35, ch. 1, part 2.

Montana Nonprofit Corporation Act — applicability, 35-2-103.

Formation, articles of incorporation, and bylaws of nonprofit corporations, Title 35, ch. 2, part 2.

Formation of religious corporations sole, Title 35, ch. 3, part 2.

Organization of professional service corporations, Title 35, ch. 4, part 2.

Formation and operation of business trusts, Title 35, ch. 5, part 2.

Formation of limited partnerships, Title 35, ch. 12, part 6.

Formation of mining partnerships, Title 35, ch. 13, part 1.

Formation, articles of incorporation, and bylaws of cooperative associations, Title 35, ch. 15, part 2.

Formation of agricultural associations, Title 35, ch. 16, part 2.

Formation of cooperative agricultural marketing associations, Title 35, ch. 17, part 2.

Formation, articles, and bylaws of rural cooperative utilities, Title 35, ch. 18, part 2.

Formation of cemetery associations, Title 35, ch. 20, part 1.

35-21-201. Incorporation required for transaction of business. It is unlawful for any corporation, partnership, firm, trust, association, or individual to engage in or transact any of the businesses of a mausoleum-columbarium within this state except by means of a corporation duly organized for that purpose.

History: En. Sec. 36, Ch. 35, L. 1949; R.C.M. 1947, 9-701.

35-21-202. General powers. Unless otherwise limited by the law under which created, mausoleum-columbarium authorities, whether for profit or not for profit, shall, in the conduct of their business, have the same powers granted by law to corporations in general, including the right to contract such pecuniary obligations within the limitations of general laws as may be required and may secure them by mortgage, deed of trust, or otherwise upon their property. A mausoleum-columbarium authority shall have power to carry on, in connection with its mausoleum-columbarium business and either on the dedicated premises or separately, any business incidental to the burial or preparation for burial of dead human bodies.

History: En. Sec. 53, Ch. 35, L. 1949; R.C.M. 1947, 9-715.

Cross-References

Encumbrances subordinate to dedication, 35-21-407.

Sale of interment plots, 35-21-412.

35-21-203. Corporate powers enlarged. The powers, privileges, and duties conferred and imposed upon any corporation existing and doing business under the laws of the state are hereby enlarged as each particular case may require to conform to the provisions of this chapter.

History: En. Sec. 39, Ch. 35, L. 1949; R.C.M. 1947, 9-704.

35-21-204. Power to establish and operate mausoleum, columbarium, or crematory. Any private corporation organized under the laws of the state of Montana and authorized by its articles so to do may establish, maintain, manage, improve, or operate a mausoleum, columbarium, or crematory or any combination thereof and conduct any or all of the businesses of a mausoleum-columbarium and crematory either for or without profit to its members or stockholders.

History: En. Sec. 37, Ch. 35, L. 1949; R.C.M. 1947, 9-702(part).

35-21-205. Governing board — number of members. The governing board of any mausoleum-columbarium authority shall have not less than seven members.

History: En. Sec. 37, Ch. 35, L. 1949; R.C.M. 1947, 9-702(part).

Cross-References

Directors and officers of business corporations, Title 35, ch. 1, part 4.

Directors and officers of nonprofit corporations, Title 35, ch. 2, part 4.

Shareholders, directors, and officers of cooperative associations, Title 35, ch. 15, part 3.

Trustees of cemetery associations, Title 35, ch. 20, part 2.

35-21-206. Office of director or officer violating chapter becomes vacant. The office of any director or officer who acts or permits action contrary to this chapter immediately thereupon becomes vacant.

History: En. Sec. 114, Ch. 35, L. 1949; R.C.M. 1947, 9-926.

35-21-207. Rulemaking power. A mausoleum-columbarium authority may make, adopt, amend, add to, revise, or modify and enforce rules for the use, care, control, management, restriction, and protection of all or any part of its mausoleum, columbarium, or crematory and for the other purposes specified in 35-21-208 to 35-21-216, inclusive.

History: En. Sec. 40, Ch. 35, L. 1949; R.C.M. 1947, 9-705.

35-21-208. Power to limit use of property. It may restrict and limit the use of all property within its mausoleum, columbarium, or crematory.

History: En. Sec. 41, Ch. 35, L. 1949; R.C.M. 1947, 9-706.

35-21-209. Regulation of markers, monuments, and structures. It may regulate the uniformity, class, and kind of all markers, monuments, and other structures within the mausoleum-columbarium.

History: En. Sec. 42, Ch. 35, L. 1949; R.C.M. 1947, 9-707.

35-21-210. Regulation or prohibition of erection of monuments, markers, and structures. It may regulate or prohibit the erection of monuments, markers, effigies, and structures within any portion of the mausoleum-columbarium or the grounds within which they may be situated.

History: En. Sec. 43, Ch. 35, L. 1949; R.C.M. 1947, 9-708.

35-21-211. Regulation of plants or shrubs. It may regulate or prevent the introduction or care of plants or shrubs within the mausoleum-columbarium or the grounds within which they may be situated.

History: En. Sec. 44, Ch. 35, L. 1949; R.C.M. 1947, 9-709.

Cross-References

Acceptance of gifts in trust — improvement, 35-21-622.

Destruction or injury of property, 35-21-704.

35-21-212. Regulation of interments. It may prevent interment in any part of the mausoleum or columbarium of human remains not entitled to interment and prevent the use of interment plots for purposes violative of its restrictions or rules.

History: En. Sec. 45, Ch. 35, L. 1949; R.C.M. 1947, 9-710.

35-21-213. Regulation of personal conduct. It may regulate the conduct of persons and prevent improper assemblages in the mausoleum-columbarium or on the grounds within which the same are situated.

History: En. Sec. 46, Ch. 35, L. 1949; R.C.M. 1947, 9-711.

35-21-214. Rules for other purposes. It may make and enforce rules for all other purposes deemed necessary by the mausoleum-columbarium authority for the proper conduct of the business of the mausoleum, columbarium, or crematory, for the transfer of any plot or the right of interment, and the protection and safeguarding of the premises and the principles, plans, and ideals on which the mausoleum, columbarium, or crematory is conducted.

History: En. Sec. 47, Ch. 35, L. 1949; R.C.M. 1947, 9-712.

Cross-References

Sale of interment plots, 35-21-412.

35-21-215. Rules to be printed or typed — inspection. The rules made pursuant to 35-21-214 shall be plainly printed or typewritten and maintained subject to inspection in the office of the mausoleum-columbarium authority or in such place or places within the mausoleum or columbarium as the mausoleum-columbarium authority may prescribe.

History: En. Sec. 48, Ch. 35, L. 1949; R.C.M. 1947, 9-713.

35-21-216. Person in charge has authority of peace officer. The sexton, superintendent, or other person in charge of a mausoleum-columbarium and such other person as the mausoleum-columbarium authority designates has the authority of a peace officer for the purpose of maintaining order, enforcing the rules of the mausoleum-columbarium authority, the laws of the state, and the ordinances of the city or county within the mausoleum-columbarium over which he has charge and within such radius as may be necessary to protect the mausoleum-columbarium or crematory property.

History: En. Sec. 49, Ch. 35, L. 1949; R.C.M. 1947, 9-714; amd. Sec. 160, Ch. 575, L. 1981.

Cross-References

General laws — miscellaneous terms, 1-1-207.

35-21-217. Power to acquire property. Mausoleum-columbarium authorities may take by purchase, donation, or devise property consisting of lands, mausoleums, crematories, and columbariums within which the interment of the dead may be authorized by law.

History: **En. Sec. 55, Ch. 35, L. 1949; R.C.M. 1947, 9-716.**

Cross-References

Acceptance of gifts in trust, 35-21-622.

Part 3

Disposition and Removal of Remains

Part Cross-References

Burial permits, 50-15-114, 50-15-405, 50-15-406.

35-21-301. Right to control disposition of remains — priorities — liability for cost. (1) The right to control the disposition of the remains of a deceased person, unless other directions have been given by the decedent, vests in and the duty of interment and the liability for the reasonable cost of interment of such remains devolves upon the following in the order named:

(a) the surviving spouse;

(b) the surviving children of the decedent;

(c) the surviving parents of the decedent.

(2) The liability for the reasonable cost of interment devolves jointly and severally upon all kin of the decedent hereinbefore mentioned in the same degree of kindred and upon the estate of the decedent.

History: **En. Sec. 23, Ch. 35, L. 1949; R.C.M. 1947, 9-601.**

35-21-302. Liability of person signing authorization for interment or cremation. Any person signing any authorization for the interment or cremation of any remains warrants the truthfulness of any fact set forth in the authorization, the identity of the person whose remains are sought to be interred or cremated, and his authority to order interments or cremation. He is personally liable for all damage occasioned by or resulting from breach of such warranty.

History: **En. Sec. 24, Ch. 35, L. 1949; R.C.M. 1947, 9-602.**

35-21-303. Authorization exempts mausoleum-columbarium from liability. The mausoleum-columbarium authority may inter or cremate any remains upon the receipt of a written authorization of a person representing himself to be a person who has acquired the right to control the disposition of the remains. A mausoleum-columbarium authority is not liable for interring or cremating pursuant to such authorization unless it has actual notice that such representation is untrue.

History: **En. Sec. 25, Ch. 35, L. 1949; R.C.M. 1947, 9-603.**

35-21-304. Limitation on actions against mausoleum-columbarium — funeral directors and morticians exempt from liability. No action shall lie against any mausoleum-columbarium authority relating to the remains of any person which have been left in its possession for a period of 2 years unless a written contract has been entered into with the mausoleum--columbarium authority for their care or unless permanent interment has been made. Nothing in this section shall be construed as an extension of the existing statute prescribing the period within which an action based upon a tort must be commenced. No licensed mortician or funeral director shall be liable in damages for any cremated human remains after the remains have been deposited with a mausoleum-columbarium authority in the state of Montana.

History: En. Sec. 26, Ch. 35, L. 1949; amd. Sec. 22, Ch. 41, L. 1963; R.C.M. 1947, 9-604.

35-21-305. Removal of remains — consent required — removal by permission of court. (1) The remains of a deceased person may be removed from a plot in a mausoleum or columbarium with the consent of the mausoleum-columbarium authority and the written consent of one of the following in the order named:

(a) the surviving spouse;
(b) the surviving children of the decedent;
(c) the surviving parents of the decedent;
(d) the surviving brothers or sisters of the decedent.

(2) If the required consent cannot be obtained, permission by the district court in the county where the mausoleum or columbarium is situated is sufficient, provided that the permission shall not violate the terms of a written contract or the rules of the mausoleum-columbarium authority.

History: En. Sec. 27, Ch. 35, L. 1949; R.C.M. 1947, 9-605.

35-21-306. Notice of application to court for removal. Notice of application to the court for such permission shall be given at least 10 days prior thereto personally, or at least 15 days prior thereto if by mail to the mausoleum-columbarium authority and to the persons not consenting and to every other person on whom service of notice may be required by the court.

History: En. Sec. 28, Ch. 35, L. 1949; R.C.M. 1947, 9-606.

35-21-307. When removals excepted. Sections 35-21-305, 35-21-306 do not apply to or prohibit the removal of any remains from one plot to another in the same dedicated area owned or operated by the same mausoleum-columbarium authority, from a plot for which the purchase price is past due and unpaid, to some other suitable place, nor does it apply to the disinterment of remains upon order of court or coroner.

History: En. Sec. 29, Ch. 35, L. 1949; R.C.M. 1947, 9-607.

Part 4

Dedication of Property — Property Rights in Plots

35-21-401. Map or plat to be made. Every mausoleum-columbarium authority, from time to time as its property may be required for interment purposes, shall make a good and substantial map or plat on which shall be delineated the sections, halls, rooms, corridors, elevations, outdoor mausoleums, urn gardens, and other divisions with descriptive names or numbers.

History: En. Sec. 56, Ch. 35, L. 1949; R.C.M. 1947, 9-801.

35-21-402. Filing plat and declaration of dedication. The mausoleum-columbarium authority shall file the map or plat in the office of the clerk and recorder of the county in which all or a portion of the property is situated. The mausoleum-columbarium authority shall also file for record in the county clerk's office a written declaration of dedication of the property delineated on the plat or map dedicating the property exclusively to interment purposes.

History: **En. Sec. 57, Ch. 35, L. 1949; R.C.M. 1947, 9-802.**

35-21-403. Dedication complete on filing — tax exemption. Upon the filing of the map or plat and the filing of the declaration for record, the dedication is complete for all purposes and thereafter the property and all mausoleums and columbariums constructed thereon and burial plots located therein shall be held, occupied, and used exclusively for interment purposes and shall be exempt from all state, county, and municipal taxes to the same extent as cemetery property intended to be used for the burial of the human dead by ground interment.

History: **En. Sec. 58, Ch. 35, L. 1949; R.C.M. 1947, 9-803.**

Cross-References

Tax exempt property, Title 15, ch. 6, part 2.

35-21-404. Resurvey — amended map or plat. Any part or subdivision of the property so mapped and plotted may, by order of the directors, be resurveyed and altered in shape and size and an amended map or plat filed, so long as the change does not disturb the interred remains of any deceased person.

History: **En. Sec. 59, Ch. 35, L. 1949; amd. Sec. 3, Ch. 62, L. 1977; R.C.M. 1947, 9-804.**

35-21-405. Filed plat and recorded declaration as constructive notice. The filed map or plat and the recorded declaration are constructive notice to all persons of the dedication of the property to interment purposes.

History: **En. Sec. 60, Ch. 35, L. 1949; R.C.M. 1947, 9-805; amd. Sec. 161, Ch. 575, L. 1981.**

Cross-References

General powers concerning property, 35-21-202.

35-21-406. Effect of dedication. After property is dedicated to interment purposes pursuant to 35-21-401 to 35-21-405, inclusive, neither the dedication nor the title of a plot owner shall be affected by the dissolution of the mausoleum-columbarium authority, by nonuser on its part, by alienation of the property, by any encumbrances, by sale under execution, or otherwise, except as provided in this chapter.

History: **En. Sec. 61, Ch. 35, L. 1949; R.C.M. 1947, 9-806.**

35-21-407. Encumbrances subordinate to dedication. All mortgages, deeds of trust, and other liens of any nature contracted, placed, or incurred after July 1, 1949, upon property which has been and was, at the time of the creation or placing of the lien, dedicated as a mausoleum-columbarium pursuant to this chapter or upon property which is afterwards, with the consent of the owner of any mortgage, trust deed, or lien, dedicated to the mausoleum-columbarium purposes pursuant to this chapter shall not affect or defeat the dedication, but the mortgage, deed of trust, or other lien is subject and subordinate to such dedication, and any and all sales made upon foreclosures are subject and subordinate to the dedication for mausoleum-columbarium purposes.

History: En. Sec. 54, Ch. 35, L. 1949; R.C.M. 1947, 9-807.

35-21-408. Dedication not violative of law against perpetuities. Dedication to interment purposes pursuant to this chapter is not invalid as violating any laws against perpetuities or the suspension of the power of alienation of title to or use of property but is expressly permitted and shall be deemed to be in respect for the dead, a provision for the interment of human remains, and a duty to and for the benefit of the general public.

History: En. Sec. 62, Ch. 35, L. 1949; R.C.M. 1947, 9-808.

Cross-References

Perpetuities, Art. XIII, sec. 6, Mont. Const.

Statutory rule against perpetuities, 70-1-802.

35-21-409. Public thoroughfare or utility through dedicated property prohibited — consent. After dedication pursuant to this chapter and as long as the property remains dedicated to interment purposes, no railroad, street, road, alley, pipeline, pole line, or other public thoroughfare or utility shall be laid out, through, over, or across any part of it without the consent of the mausoleum-columbarium authority owning and operating it or of not less than two-thirds of the owners of interment plots therein.

History: En. Sec. 63, Ch. 35, L. 1949; R.C.M. 1947, 9-809.

35-21-410. Removal of dedication by order of court. Property dedicated to interment purposes shall be held and used exclusively for interment purposes, unless and until the dedication is removed from all or any part of it by an order and decree of the district court in the county in which the property is situated in a proceeding brought by the mausoleum-columbarium authority for that purpose and upon notice of hearing and proof satisfactory to the court:

(1) that no interments were made in or that all interments have been removed from that portion of the property from which dedication is sought to be removed;

(2) that the portion of the property from which dedication is sought to be removed is not being used for interment of human remains.

History: En. Sec. 70, Ch. 35, L. 1949; R.C.M. 1947, 9-816.

Cross-References

Special statutory proceedings, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

35-21-411. Notice of hearing on removal of dedication. (1) The notice of hearing provided in 35-21-410 shall be given by publication once a week for at least 3 consecutive weeks in a newspaper of general circulation in the county where said mausoleum or columbarium is located and the posting of copies of the notice in three conspicuous places on that portion of the property from which the dedication is to be removed.

(2) Said notice shall:

(a) describe the portion of the mausoleum or columbarium property sought to be removed from dedication;

(b) state that all remains have been removed or that no interments have been made in the portion of the mausoleum or columbarium property sought to be removed from dedication;

(c) specify the time and place of the hearing.

History: **En. Sec. 71, Ch. 35, L. 1949; R.C.M. 1947, 9-817.**

35-21-412. Sale of interment plots. After filing the map or plat and recording the declaration of dedication, a mausoleum-columbarium authority may sell and convey interment plots subject to such rules as may be then in effect or thereafter adopted by the mausoleum-columbarium authority and subject to such other and further limitations, conditions, and restrictions as may be inserted in or made a part of the declaration of dedication by reference or included in the instrument of conveyance of such plot.

History: **En. Sec. 64, Ch. 35, L. 1949; R.C.M. 1947, 9-810.**

Cross-References

Record of ownership and transfer of plots required, 35-21-501.

Records of interments and cremations required, 35-21-502.

35-21-413. Signature on conveyance. All conveyances made by a mausoleum-columbarium authority shall be signed by such officer or officers as are authorized by the mausoleum-columbarium authority.

History: **En. Sec. 66, Ch. 35, L. 1949; R.C.M. 1947, 9-812.**

35-21-414. Separate conveyed plots indivisible. All plots, the use of which has been conveyed by deed or certificate of ownership as a separate plot, are indivisible except with the consent of the mausoleum-columbarium authority or as provided by law.

History: **En. Sec. 65, Ch. 35, L. 1949; R.C.M. 1947, 9-811.**

35-21-415. Selling for resale at profit — misdemeanor. It shall be unlawful for any person, firm, or corporation to sell or offer to sell a mausoleum-columbarium plot upon the promise, representation, or inducement of resale at a financial profit. Each person violating this section shall be guilty of a misdemeanor, and each violation shall constitute a separate offense.

History: **En. Sec. 67, Ch. 35, L. 1949; R.C.M. 1947, 9-813.**

35-21-416. Commission or rebate for sale — misdemeanor — exception. It shall be unlawful for a mausoleum-columbarium authority to pay or offer to pay to any person, firm, or corporation, directly or indirectly, a commission or bonus or rebate or other thing of value for the sale of a plot or services. This shall not apply to a person regularly employed by the mausoleum-columbarium authority or to any bona fide agent of the authority previously appointed for such purpose. Each person violating this section shall be guilty of a misdemeanor, and each violation shall constitute a separate offense.

History: **En. Sec. 68, Ch. 35, L. 1949; R.C.M. 1947, 9-814.**

35-21-417. Commission or rebate for causing disposition of body in crematory, mausoleum, or columbarium — misdemeanor. Every person who pays or causes to be paid or offers to pay to any other person, firm, or corporation, directly or indirectly, except as provided in 35-21-416, any commission or bonus or rebate or other thing of value in consideration of recommending or causing a dead human body to be disposed of in any crematory, mausoleum, or columbarium is guilty of a misdemeanor, and each violation shall constitute a separate offense.

History: En. Sec. 69, Ch. 35, L. 1949; R.C.M. 1947, 9-815.

35-21-418. Property interest in plot — owner. All plots conveyed to individuals are presumed to be the sole and separate property of the owner named in the instrument of conveyance.

History: En. Sec. 72, Ch. 35, L. 1949; R.C.M. 1947, 9-818.

35-21-419. Spouse — vested right of interment. The spouse of an owner of any plot containing more than one interment space has a vested right of interment of his remains in the plot and any person thereafter becoming the spouse of the owner has a vested right of interment of his remains in the plot if an interment space therein not subject to the vested right of interment for previous spouses is unoccupied at the time such person becomes the spouse of the owner.

History: En. Sec. 73, Ch. 35, L. 1949; R.C.M. 1947, 9-819.

35-21-420. Right of spouse not divested by conveyance — effect of divorce. No conveyance or other action of the owner without the written consent or joinder of the spouse of the owner divests the spouse of a vested right of interment, except that a final decree of divorce between them terminates the vested right of interment unless otherwise provided in the decree.

History: En. Sec. 74, Ch. 35, L. 1949; R.C.M. 1947, 9-820.

35-21-421. Descent of plot on death of owner when no interment made. If no interment is made in a plot which has been transferred by deed or certificate of ownership to an individual owner or if all remains previously interred therein are lawfully removed, the plot descends upon the death of the owner to his heirs-at-law subject to the rights of interment of the decedent and his surviving spouse unless he has disposed of the plot either in his will by specific devise or by a written declaration filed and recorded in the office of the mausoleum-columbarium authority.

History: En. Sec. 75, Ch. 35, L. 1949; R.C.M. 1947, 9-821.

35-21-422. Exemption from inheritance tax. Mausoleum or columbarium property passing to an individual by reason of the death of the owner is exempt from all inheritance taxes.

History: En. Sec. 76, Ch. 35, L. 1949; R.C.M. 1947, 9-822.

Cross-References

Inheritance and estate tax exemptions, Title 72, ch. 16, part 3.

35-21-423. Affidavit showing death of owner and name of person entitled to plot authorizes use of plot. An affidavit by a person having knowledge of the facts setting forth the fact of the death of the owner and the name of the person or persons entitled to the use of the plot pursuant to 35-21-418 to 35-21-421, inclusive, is a complete authorization to the mausoleum-columbarium authority to permit the use of the unoccupied portions of the plot by the person entitled to the use of it.

History: En. Sec. 77, Ch. 35, L. 1949; R.C.M. 1947, 9-823.

35-21-424. When plot becomes inalienable — family plot. Whenever the remains of the record owner or of a member of his family or of a relative of a member of his family have been interred in a plot transferred by deed or certificate of ownership to an individual owner and the owner shall have died without making disposition of the plot either in his will by a specific devise or by a written declaration filed and recorded in the office of the mausoleum-columbarium authority, the plot thereby becomes inalienable and shall be held as the family plot of the owner.

History: En. Sec. 82, Ch. 35, L. 1949; R.C.M. 1947, 9-828.

35-21-425. Family plot — persons who may be interred — priorities. (1) In a family plot, one crypt or one niche or interment space therein may be used for the owner's interment; one for the owner's surviving spouse, if any, who by law has a vested right of interment in it; and in those remaining, if any, the parents and children of the deceased owner in order of death may be interred without the consent of any person claiming any interest in the plot.

(2) If no parent or child survives, the right of interment goes in the order of death first to the spouse of any child of the record owner, and second in the order of death to the next heirs-at-law of the owner or the spouse of any heir-at-law.

History: En. Secs. 83, 84, Ch. 35, L. 1949; R.C.M. 1947, 9-829, 9-830.

35-21-426. Waiver of right of interment in family plot. Any surviving spouse, parent, child, or heir having a right of interment in a family plot may waive such right in favor of any other relative or spouse of a relative of the deceased owner, and upon such waiver the remains of the person in whose favor the waiver is made may be interred in the plot.

History: En. Sec. 85, Ch. 35, L. 1949; R.C.M. 1947, 9-831.

35-21-427. Termination of right of interment upon interment elsewhere. A vested right of interment may be waived and is terminated upon the interment elsewhere of the remains of the person in whom it is vested.

History: En. Sec. 86, Ch. 35, L. 1949; R.C.M. 1947, 9-832.

35-21-428. Conveyance to mausoleum-columbarium authority by plot owner. A mausoleum-columbarium authority may take and hold any plot conveyed or devised to it by the plot owner so that it will be inalienable, and interments shall be restricted to the persons designated in the conveyance or devise.

History: En. Sec. 88, Ch. 35, L. 1949; R.C.M. 1947, 9-834.

35-21-429. Conveyance to joint tenants. In a conveyance to two or more persons as joint tenants each joint tenant has a vested right of interment in the plot conveyed.

History: En. Sec. 78, Ch. 35, L. 1949; R.C.M. 1947, 9-824.

Cross-References
Joint interest defined, 70-1-307.

35-21-430. Death of joint tenant — effect. Upon the death of a joint tenant, the title to the plot held in joint tenancy immediately vests in the survivors, subject to the vested right of interment of the remains of the deceased joint tenant.
History: En. Sec. 79, Ch. 35, L. 1949; R.C.M. 1947, 9-825.

35-21-431. Affidavit showing death of joint tenant and identity of survivors authorizes use of plot. An affidavit by any person having knowledge of the facts setting forth the fact of the death of one joint tenant and establishing the identity of the surviving joint tenants named in the deed to any plot, when filed with the mausoleum-columbarium authority operating the mausoleum-columbarium in which the plot is located, is a complete authorization to the mausoleum-columbarium authority to permit the use of the unoccupied portion of the plot in accordance with the directions of the surviving joint tenants or their successors in interest.
History: En. Sec. 80, Ch. 35, L. 1949; R.C.M. 1947, 9-826.

35-21-432. Co-owners of plot — representative — authority not liable for interment pursuant to request of any co-owner. When there are several owners of a plot or of rights of interment in it, they may designate one or more persons to represent the plot and file written notice of such designation with the mausoleum-columbarium authority. In the absence of such notice or of written objection to its so doing, the mausoleum-columbarium authority is not liable to any owner for interring or permitting an interment in the plot upon the request or direction of any co-owner of the plot.
History: En. Sec. 81, Ch. 35, L. 1949; R.C.M. 1947, 9-827.

35-21-433. Limitations on vested right of interment. No vested right of interment gives to any person the right to have his remains interred in any interment space in which the remains of any deceased person having a prior vested right of interment have been interred, nor does it give any person the right to have the remains of more than one deceased person interred in a single interment space in violation of the rules of the mausoleum-columbarium authority controlling the operation of the mausoleum or columbarium in which the interment space is located.
History: En. Sec. 87, Ch. 35, L. 1949; R.C.M. 1947, 9-833.

Part 5

Records

35-21-501. Record of ownership and transfer of plots required. A record shall be kept of the ownership of all plots in the mausoleum and columbarium which have been conveyed by the mausoleum-columbarium authority and of all transfers of plots therein. No transfer of any plot, heretofore or hereafter made, or any right of interment shall be complete or effective until recorded on the books of the mausoleum-columbarium authority.
History: En. Sec. 34, Ch. 35, L. 1949; R.C.M. 1947, 9-609.

Cross-References
Record of interment open to the public, 35-20-210.
Sale of interment plots, 35-21-412.

35-21-502. Records of interments and cremations required. The mausoleum-columbarium authority in charge of any mausoleum or columbarium in which interments or cremations are made shall keep a record of all remains interred or cremated on the premises under its charge, in each case stating the name of each deceased person, date of cremation or interment, and name and address of the funeral director.

History: En. Sec. 33, Ch. 35, L. 1949; R.C.M. 1947, 9-608.

Cross-References
Sale of interment plots, 35-21-412.
Record of ownership and transfer of plots required, 35-21-501.

35-21-503. Records open to inspection. The records shall be open to inspection during the customary office hours of the mausoleum-columbarium authority.

History: En. Sec. 35, Ch. 35, L. 1949; R.C.M. 1947, 9-610.

35-21-504. Record of casket before cremation — inspection. No crematory operated by a mausoleum-columbariun authority shall, after July 1, 1949, cremate the remains of any human body without making a permanent signed record of the color, shape, and outside covering of the casket consumed with such body, said record to be open to inspection of any person lawfully entitled thereto.

History: En. Sec. 51, Ch. 35, L. 1949; R.C.M. 1947, 9-611.

35-21-505. Violation a misdemeanor. Each person violating any provision of 35-21-504 shall be guilty of a misdemeanor and each violation shall constitute a separate offense.

History: En. Sec. 52, Ch. 35, L. 1949; R.C.M. 1947, 9-612.

Cross-References
Misdemeanor penalty specified, 46-18-212.

Part 6

Endowment Care and Trust Funds

Part Cross-References
Agency, Title 28, ch. 10.
Trust code, Title 72, ch. 33 through 36.

35-21-601. Authority to establish endowment care fund — commingling for investment. (1) Every mausoleum-columbarium authority which on or after July 1, 1949, maintains a mausoleum or columbarium may place its mausoleum or columbarium under endowment care and establish, maintain, and operate an irreducible endowment care fund.

(2) Endowment care and special care funds may be commingled for investment and the income therefrom shall be divided between the endowment care and special care funds in the proportion that each fund contributed to the principal sum invested. The funds may be held in the name of the mausoleum-columbarium authority or its directors or in the name of the trustees appointed by the mausoleum-columbarium authority.

History: En. Sec. 89, Ch. 35, L. 1949; R.C.M. 1947, 9-901.

35-21-602. Principal of funds irreducible. The principal of all funds for endowment care shall forever remain irreducible and inviolable and shall be maintained separate and distinct from all other funds.

History: En. Sec. 90, Ch. 35, L. 1949; R.C.M. 1947, 9-902.

35-21-603. Investment of funds — use of income. The principal of all funds for endowment care shall be invested, from time to time reinvested, and kept invested, and the income earned shall be used solely for the general care, maintenance, and embellishment of the mausoleum or columbarium or both and the grounds in which they are situated and shall be applied in such manner as the mausoleum-columbarium authority may from time to time determine to be for the best interest of the mausoleum-columbarium.

History: En. Sec. 91, Ch. 35, L. 1949; R.C.M. 1947, 9-903.

35-21-604. Permissible investment securities. The endowment care funds shall be invested, reinvested, and kept invested in securities which are legal investments for public employees' retirement funds under the laws of the state of Montana.

History: En. Sec. 109, Ch. 35, L. 1949; amd. Sec. 7, Ch. 98, L. 1974; R.C.M. 1947, 9-921(part).

Cross-References

Permissible investments, 17-6-211.

Mausoleum-columbarium authority — investments, 35-21-609.

35-21-605. Plans for general care — collections from purchasers of plots for fund. The mausoleum-columbarium authority may from time to time adopt plans for the general care, maintenance, and embellishment of its mausoleum-columbarium and charge and collect from all subsequent purchasers of plots such reasonable sums as, in the judgment of the mausoleum--columbarium authority, will aggregate a fund, the reasonable income from which will provide reasonable care, maintenance, and embellishment.

History: En. Sec. 92, Ch. 35, L. 1949; R.C.M. 1947, 9-904.

35-21-606. Agreement for care in accordance with plan. Upon payment of the purchase price and the amount fixed as a proportionate contribution for endowment care, there may be included in the deed of conveyance or in a separate instrument an agreement to care, in accordance with the plan adopted, for the mausoleum or columbarium and its appurtenances to the proportionate extent that the income received by the mausoleum-columbarium authority from the contribution will permit.

History: En. Sec. 93, Ch. 35, L. 1949; R.C.M. 1947, 9-905.

35-21-607. Agreement for endowment care of plot. Upon the application of the owner of any plot and upon the payment by him of the amount fixed as a reasonable and proportionate contribution for endowment care, a mausoleum-columbarium authority may enter into an agreement with him for the care of his plot and its appurtenances.

History: En. Sec. 94, Ch. 35, L. 1949; R.C.M. 1947, 9-906.

35-21-608. Board of trustees of fund. The mausoleum-columbarium authority may appoint a board of trustees of not less than five in number for its endowment care fund. The members of the board of trustees shall hold office subject to the discretion of the mausoleum-columbarium authority.

History: **En. Sec. 95, Ch. 35, L. 1949; R.C.M. 1947, 9-907.**

35-21-609. Directors of mausoleum-columbarium authority as trustees — investments. The directors of a mausoleum-columbarium authority, if any, may be constituted as the trustees of its endowment care fund. When the fund is in the care of the directors as a board of trustees, the secretary of the mausoleum-columbarium authority shall act as secretary of the board of trustees and keep a true record of all of its proceedings. The investments of the endowment care fund may be held in the name of the mausoleum-columbarium authority.

History: **En. Sec. 96, Ch. 35, L. 1949; R.C.M. 1947, 9-908.**

Cross-References

Permissible investment securities, 35-21-604.

35-21-610. Bank or trust company as trustee. In lieu of the appointment of a board of trustees of its endowment care fund, any mausoleum-columbarium authority may appoint as sole trustee of its endowment care fund any bank or trust company qualified to engage in the trust business in the state of Montana, and such bank or trust company shall be authorized to receive and accept said fund and all accretions thereto, including any accumulated endowment care fund in existence at the time of its appointment.

History: **En. Sec. 97, Ch. 35, L. 1949; R.C.M. 1947, 9-909.**

35-21-611. Compensation of trustees. No sum in excess of 5% of the income derived from the fund in any year shall be paid as compensation to the board of trustees for its services as trustee, provided that if 5% of such income divided by the number of trustees shall be less than $100, each trustee shall nevertheless be entitled to receive a minimum of $100 per year for his services as such trustee.

History: **En. Sec. 98, Ch. 35, L. 1949; R.C.M. 1947, 9-910.**

35-21-612. Annual financial report to be filed with district court. The mausoleum-columbarium authority or the persons in whose names the endowment care funds are held shall, annually and within 90 days after the end of the calendar or fiscal year of the mausoleum-columbarium authority, make and file with the district court in the county in which the mausoleum--columbarium is located a true and correct written report verified on oath by an officer of the mausoleum-columbarium authority or by the oath of one or more of the trustees, showing the actual financial condition of the endowment care funds.

History: **En. Sec. 99, Ch. 35, L. 1949; R.C.M. 1947, 9-911.**

35-21-613. Gifts for endowment care fund. A mausoleum-columbarium authority which has established an endowment care fund may take, receive, and hold as a part of or incident to the fund any property, real, personal, or mixed, bequeathed, devised, granted, given, or otherwise contributed to it for its endowment care fund.

History: **En. Sec. 100, Ch. 35, L. 1949; R.C.M. 1947, 9-912.**

35-21-614. Endowment fund and contributions for charitable purposes — validity of contributions. (1) The endowment care fund and all payments or contributions to it are hereby expressly permitted as and for charitable and eleemosynary purposes. Endowment care is a provision for the discharge of a duty from the persons contributing to the persons interred and to be interred in the mausoleum-columbarium and a provision for the benefit and protection of the public by preserving and keeping mausoleum-columbariums from becoming unkept and places of reproach and desolation in the communities in which they are situated.

(2) No payment, gift, grant, bequest, or other contribution for general endowment care is invalid by reason of any indefiniteness or uncertainty of the persons designated as beneficiaries in the instruments creating the trust, nor is the fund or any contribution to it invalid as violating any law against perpetuities or the suspension of the power of alienation of title to property.

History: **En. Sec. 101, Ch. 35, L. 1949; R.C.M. 1947, 9-913.**

35-21-615. Endowment care mausoleum-columbarium — amount of deposit required. (1) An endowment care mausoleum-columbarium is one which shall after July 1, 1949, deposit in its endowment care fund not less than the following amounts for plots sold or disposed of:

(a) $5 for each niche;

(b) $15 for each crypt.

(2) The deposit shall be made not later than the 20th day of the month following the final payment on the purchase price of the plot.

History: **En. Sec. 102, Ch. 35, L. 1949; R.C.M. 1947, 9-914.**

35-21-616. Nonendowment care mausoleum-columbarium. A nonendowment care mausoleum-columbarium is one that does not deposit in an endowment care fund the minimum specified in 35-21-615.

History: **En. Sec. 103, Ch. 35, L. 1949; R.C.M. 1947, 9-915.**

35-21-617. Endowment care mausoleum or columbarium — sign required. Each mausoleum-columbarium authority operating an endowment care mausoleum or columbarium shall post in a conspicuous place in its office or offices where sales are conducted and in a conspicuous place at or near the entrance of the mausoleum or columbarium or its administration building and readily accessible to the public a legible sign with the following phrase: "This is an endowment care property".

History: **En. Sec. 104, Ch. 35, L. 1949; R.C.M. 1947, 9-916.**

35-21-618. Annual report of endowment care mausoleum or columbarium to be filed in principal office. Each mausoleum-columbarium authority operating an endowment care mausoleum or columbarium shall file in its principal office a written report which shall be available to any plot owner and which shall contain, as of the close of its last fiscal year:

(1) amount of principal of the endowment care fund;

(2) total amount invested in bonds, securities, or other investments authorized by law and the total amount of cash on hand not invested, which shall actually show the financial condition of the trust.

History: **En. Sec. 105, Ch. 35, L. 1949; R.C.M. 1947, 9-917.**

35-21-619. Annual revision of report — verification. All the information appearing on the report filed in the mausoleum-columbarium authority office shall be revised annually and verified by the president and secretary or two officers authorized by the mausoleum-columbarium authority.

History: En. Sec. 106, Ch. 35, L. 1949; R.C.M. 1947, 9-918.

35-21-620. Nonendowment care mausoleum or columbarium — sign required. Each mausoleum-columbarium authority operating a nonendowment care mausoleum or columbarium shall post in a conspicuous place in its office or offices where sales are conducted and in a conspicuous place at or near the entrance of the mausoleum or columbarium or its administration building and readily accessible to the public, a legible sign with the following phrase: "This is not an endowment care property". This phrase likewise shall be printed or stamped at the head of all contracts, certificates of ownership, or deeds.

History: En. Sec. 107, Ch. 35, L. 1949; R.C.M. 1947, 9-919.

35-21-621. Violation a misdemeanor. Any corporation or its agents or representatives who shall violate any of the provisions of 35-21-615 to 35-21-620, inclusive, or make any false statement appearing on said sign, contract, agreement, receipt, statement, literature, or other publication shall be guilty of a misdemeanor.

History: En. Sec. 108, Ch. 35, L. 1949; R.C.M. 1947, 9-920.

Cross-References

Misdemeanor penalty specified, 46-18-212.

35-21-622. Acceptance of gifts in trust. A mausoleum-columbarium authority which has established endowment care may also take and hold any property bequeathed, granted, or given to it in trust to apply the principal or proceeds or income to either or all of the following purposes:

(1) improvement or embellishment of all or any part of the mausoleum or columbarium or any plot in it;

(2) planting or cultivation of trees, shrubs, or plants in or around any part of the grounds in which the mausoleum-columbarium is situated;

(3) special care or ornamenting of any part of any plot, section, corridor, or other portion of the mausoleum-columbarium;

(4) any purpose or use not inconsistent with the purpose for which the mausoleum-columbarium was established or is maintained.

History: En. Sec. 110, Ch. 35, L. 1949; R.C.M. 1947, 9-922.

Cross-References

Regulation of plants or shrubs, 35-21-211.

Power to acquire property, 35-21-217.

35-21-623. Contributions for charitable purposes — validity of contributions. (1) The sums paid in or contributed to the fund authorized by this chapter are hereby expressly permitted as and for a charitable and eleemosynary purpose. Such contributions are a provision for the discharge of a duty due from the persons contributing to the person or persons interred or to be interred in the mausoleum-columbarium and likewise a provision for the benefit and protection of the public by preserving, beautifying, and keeping mausoleums and columbariums from becoming unkept and place of reproach and desolation in the communities in which they are situated.

(2) No payment, gift, grant, bequest, or other contribution for such purpose is invalid by reason of any indefiniteness or uncertainty of the persons designated as beneficiaries in the instruments creating the fund, nor is the fund or any contribution to it invalid as violating any law against perpetuities or the suspension of the power of alienation of title to property.

History: **En. Sec. 111, Ch. 35, L. 1949; R.C.M. 1947, 9-923.**

35-21-624. Director, officer, or trustee not to borrow funds. No director or officer of the mausoleum-columbarium authority or trustee of the endowment care or special care funds shall borrow any endowment care or special care funds of the corporation for himself, directly or indirectly.

History: **En. Sec. 112, Ch. 35, L. 1949; R.C.M. 1947, 9-924.**

35-21-625. Illegal loan — misdemeanor. Every director or officer authorizing or consenting to a loan and the person who receives a loan in violation of this chapter are severally guilty of a misdemeanor.

History: **En. Sec. 115, Ch. 35, L. 1949; R.C.M. 1947, 9-927.**

Cross-References

Misdemeanor penalty specified, 46-18-212.

35-21-626. Merchandise trust fund. Whenever moneys are received by any corporation or association for merchandise sold by such corporation or association for future delivery, a merchandise trust fund shall be established and the wholesale cost of said merchandise deposited therein. The trustees shall administer this trust fund in accordance with this chapter. Upon delivery of said merchandise to the purchaser, the moneys on deposit therefor shall be paid to the corporation or association.

History: **En. Sec. 109, Ch. 35, L. 1949; amd. Sec. 7, Ch. 98, L. 1974; R.C.M. 1947, 9-921(part).**

Part 7

Desecration and Vandalism
Regulation of Construction

Part Cross-References

Disinterment permits, 50-15-407.

35-21-701. Removal of remains with intent to sell or dissect — penalty. Every person who removes any part of any human remains from any place where it has been interred in a mausoleum or columbarium or from any place where it is deposited while awaiting interment in a mausoleum or columbarium with intent to sell it or to dissect it without authority of law or from malice or wantonness shall be punished by imprisonment in the state penitentiary for not more than 5 years or by a fine of not more than $1,000 or by both.

History: **En. Sec. 20, Ch. 35, L. 1949; R.C.M. 1947, 9-1001.**

35-21-702. Mutilation or removal of remains without authority — penalty. Every person who mutilates, disinters, or removes from the place of interment in a mausoleum or columbarium any human remains without authority of law shall be punished by imprisonment in the state penitentiary for not more than 3 years or by a fine of not more than $1,000 or by both.

History: **En. Sec. 21, Ch. 35, L. 1949; R.C.M. 1947, 9-1002.**

35-21-703. Attachment or detention of remains — misdemeanor. A person who arrests, attaches, detains, or claims to detain any human remains for any debt or demand or upon any pretended lien or charge is guilty of a misdemeanor.

History: **En. Sec. 22, Ch. 35, L. 1949; amd. Sec. 4, Ch. 62, L. 1977; R.C.M. 1947, 9-1003.**

35-21-704. Destruction or injury of property — interference with funeral or interment — misdemeanor. (1) A person is guilty of criminal mischief and is punishable as provided in 45-6-101 who without right knowingly does any of the following:

(a) destroys, cuts, mutilates, effaces, or otherwise injures, tears down, or removes a crypt, niche, monument, memorial, or marker in a mausoleum or columbarium or a gate, door, fence, wall, post, or railing or an inclosure for the protection of a crypt or niche or any other property in a mausoleum or columbarium;

(b) destroys, cuts, breaks, removes, or injures a building, statuary, ornamentation, tree, shrub, flower, or plant within a mausoleum or columbarium or within the limits of any grounds within which a mausoleum or columbarium is located.

(2) A person is guilty of a misdemeanor who without right knowingly disturbs, obstructs, detains, or interferes with a person carrying or accompanying human remains to a mausoleum, columbarium, or funeral establishment or a person who is engaged in a funeral service or an interment.

History: **En. Sec. 30, Ch. 35, L. 1949; amd. Sec. 5, Ch. 62, L. 1977; R.C.M. 1947, 9-1004.**

Cross-References

Regulation of plants or shrubs, 35-21-211.

35-21-705. Civil liability — application of recovery. Any person violating any provision of 35-21-704 is liable in a civil action by and in the name of the mausoleum-columbarium authority to pay all damages occasioned by his unlawful acts. The sum recovered shall be applied in payment for the repair and restoration of the property injured or destroyed.

History: **En. Sec. 31, Ch. 35, L. 1949; R.C.M. 1947, 9-1005.**

35-21-706. Exemptions from criminal mischief provisions. (1) The provisions of 35-21-704 do not apply to the removal or unavoidable breakage or injury, by a mausoleum-columbarium authority, of anything placed in or upon any portion of its mausoleum or columbarium or the grounds within which the same are situated in violation of any of the rules of the mausoleum-columbarium authority.

(2) The provisions of 35-21-704 do not apply to the removal of anything placed in a mausoleum or columbarium or the grounds within which it is situated, by or with the consent of the mausoleum-columbarium authority, which has become wrecked, unsightly, or dilapidated.

History: **En. Sec. 32, Ch. 35, L. 1949; amd. Sec. 6, Ch. 62, L. 1977; R.C.M. 1947, 9-1006.**

35-21-707. Converted or altered building subject to chapter. A building not erected for or which is not used as a place of interment of human remains which is converted or altered for such use by a mausoleum--columbarium authority is subject to this chapter.

History: **En. Sec. 116, Ch. 35, L. 1949; R.C.M. 1947, 9-1007.**

35-21-708. Construction requirements — durability. No building or structure intended to be used for the interment of human remains shall be constructed and a building not used for the interment of human remains shall not be altered for use or used for interment purposes unless constructed of such material and workmanship as will ensure its durability and permanence as dictated and determined at the time by modern mausoleum construction and engineering science.

History: **En. Sec. 117, Ch. 35, L. 1949; R.C.M. 1947, 9-1008.**

35-21-709. Fireproof construction of crematories — exceptions. (1) No crematory shall be constructed or established by a mausoleum-columbarium authority unless the crematory is of fireproof construction and there is in connection therewith either a fireproof columbarium or a fireproof mausoleum, amply equipped at all times for the interment of remains of bodies cremated at the crematory and a fireproof room for temporary care of cremated remains.

(2) Nothing herein contained shall prevent crematories existing on July 1, 1949, from being repaired, altered, or reconstructed. Nothing in this chapter shall prohibit the cremation of human remains in crematories existing on July 1, 1949, or the temporary storage of cremated remains.

History: **En. Sec. 50, Ch. 35, L. 1949; R.C.M. 1947, 9-1009.**

35-21-710. Fireproof construction of mausoleums and columbariums. All mausoleums or columbariums constructed after July 1, 1949, shall be of Class "A" fireproof construction.

History: **En. Sec. 118, Ch. 35, L. 1949; R.C.M. 1947, 9-1010.**

35-21-711. Construction to comply with city ordinances. If the proposed site is within the jurisdiction of a city having ordinances and specifications governing Class "A" construction, the provisions of the local ordinances and specifications shall not be violated.

History: **En. Sec. 119, Ch. 35, L. 1949; R.C.M. 1947, 9-1011.**

Cross-References

Municipal and county building codes, Title 50, ch. 60, part 3.

35-21-712. Construction in violation of chapter a public nuisance — penalty. An owner or operator of a mausoleum or columbarium erected in violation of this chapter is guilty of maintaining a public nuisance and upon conviction is punishable by a fine of not less than $500 or more than $5,000 in the case of a corporation or as provided in 45-8-111 in the case of an individual. In addition, the owner or operator is liable for all costs, expenses, and disbursements paid or incurred in prosecuting the case. The costs, expenses, and disbursements shall be fixed by the court having jurisdiction of the case.

History: **En. Sec. 121, Ch. 35, L. 1949; amd. Sec. 7, Ch. 62, L. 1977; R.C.M. 1947, 9-1013.**

Cross-References
Public nuisance, 45-8-111.

35-21-713. Violations of chapter a misdemeanor. Every person who violates any provision of this chapter is guilty of a misdemeanor and in addition is liable for all costs, expenses, and disbursements paid or incurred by a person prosecuting the case.

History: En. Sec. 120, Ch. 35, L. 1949; R.C.M. 1947, 9-1012.

Cross-References
Misdemeanor penalty specified, 46-18-212.

TITLE 36

RESERVED

TITLE 37

PROFESSIONS AND OCCUPATIONS

Ch.
1. General Provisions.
2. General Provisions Relating to Health Care Practitioners.
3. Medicine.
4. Dentistry and Dental Hygiene.
5. Osteopathy.
6. Podiatry.
7. Pharmacy.
8. Nursing.
9. Nursing Home Administrators.
10. Optometry.
11. Physical Therapy.
12. Chiropractic.
13. Acupuncture Practice Act.
14. Radiologic Technologists.
15. Speech-Language Pathologists and Audiologists.
16. Hearing Aid Dispensers.
17. Psychologists.
18. Veterinary Medicine.
19. Morticians and Funeral Directors.
20. Physician Assistants-Certified.
21. Dietitians.
22. Social Work.
23. Professional Counseling.
24. Occupational Therapy.
25. Nutritionists.
Chapters 26 through 28 reserved.
29. Denturitry.
30. Barbers.
31. Cosmetology.
32. Electrology.
33. Massage Therapy. Repealed. Sec. 7, Ch. 84, L. 1983.
Chapters 34 through 39 reserved.
40. Sanitarians.
41. Cesspool, Septic Tank, and Privy Cleaners.
42. Water Treatment Plant Operators.
43. Water Well Contractors.
Chapters 44 through 46 reserved.
47. Outfitters and Guides.
Chapters 48 and 49 reserved.
50. Public Accountants.
51. Real Estate Brokers and Salesmen.
52. Title Abstracters. Repealed. Sec. 195, Ch. 575, L. 1981.
53. Timeshare Sales.
Chapters 54 through 59 reserved.
60. Private Investigators and Patrol Officers.
61. Attorneys at Law.
62. Polygraph Examiners.
Chapters 63 and 64 reserved.
65. Architecture.
66. Landscape Architecture.
67. Engineers and Land Surveyors.
68. Electricians and Electrical Safety.
69. Plumbers.
70. Heating, Ventilation, Air Conditioning. Repealed. Sec. 195, Ch. 575, L. 1981.

71. Public Contractors.
72. Construction Blasting.
Chapters 73 and 74 reserved.
75. Direct-Entry Midwifery.

Title Cross-References

Licensing of athletics, boxing and wrestling matches, Title 23, ch. 3.

Licensing of horseracing, Title 23, ch. 4.

Licensing and registration of insurance producers, adjusters, consultants, and administrators, Title 33, ch. 17.

CHAPTER 1

GENERAL PROVISIONS

Part 1 — Duties and Authority of Department, Director, and Boards

37-1-101. Duties of department.
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Chapter Cross-References

Horseracing, Title 23, ch. 4.

Gambling, Title 23, ch. 5.

Licensing of savings and loan agents, 32-2-409.

Licensing of outfitters and guides, Title 37, ch. 47.

Part 1

Duties and Authority of Department, Director, and Boards

Part Cross-References

Department and boards created, Title 2, ch. 15, part 18.

37-1-101. Duties of department. In addition to the provisions of 2-15-121, the department of commerce shall:

(1) provide all the administrative and clerical services needed by the boards within the department, including corresponding, taking applications for licenses, issuing licenses granted by the boards, renewing licenses, registering, taking minutes of board meetings and hearings, and filing;

(2) standardize and keep in Helena all official records of the boards;

(3) make arrangements and provide facilities in Helena for the meetings, hearings, and examinations of each board or elsewhere in the state if requested by the board;

(4) administer and grade examinations required by each board or by law for licensing, unless the board determines that experts or professionals are necessary to administer or grade a particular examination;

(5) at the request of a board, investigate complaints received by the department of illegal or unethical conduct of a member of the profession or occupation under the jurisdiction of a board within the department;

(6) assess the costs of the department to the boards on an equitable basis as determined by the department;

(7) adopt rules establishing expiration dates of licenses for barbers, barbershops, professional engineers, professional land surveyors, nursing home administrators, optometrists, plumbers, social workers, speech-language pathologists, audiologists, and radiologic technologists.

History: En. 82A-1603 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-1603; amd. Sec. 1, Ch. 293, L. 1981; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 390, L. 1983; amd. Sec. 1, Ch. 307, L. 1985; amd. Sec. 42, Ch. 83, L. 1989; amd. Sec. 6, Ch. 413, L. 1989.

Compiler's Comments

1989 Amendments: Chapter 83, in (7) inserted "professional" before "land surveyors".

Chapter 413, changed reference to speech pathologist to reference to speech-language pathologist.

Cross-References

Allocation for administrative purposes only, 2-15-121.

Department's duties for Board of Horseracing, 23-4-103.

37-1-102. Renumbered 37-1-121 by Code Commissioner, 1981.

37-1-103. Renumbered 37-1-131 by Code Commissioner, 1981.

37-1-104. Standardized forms. It is the responsibility of the department whenever possible to adopt standardized application, license, and other forms used by the boards within the department. The standardization is to reduce costs, waste, and the use of out-of-date forms and facilitate automated printing and computerization.

History: En. Sec. 2, Ch. 293, L. 1981.

37-1-105. Reporting disciplinary actions against licensees. The department has the authority and shall require that all licensing boards within the department require all applicants for licensure or renewal to report any legal or disciplinary actions against them which relate to the propriety of the applicants' practice of or their fitness to practice the profession or occupation for which they seek licensure. Failure to furnish the required information or the filing of false information is grounds for denial or revocation of a license.

History: En. Sec. 3, Ch. 293, L. 1981.

Cross-References

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-1-106. Biennial report to governor and legislature. The department, in cooperation with each licensing board, shall prepare a biennial report. The biennial report of the department shall contain for each board a summary of the board's activities, the board's goals and objectives, a detailed breakdown of board revenues and expenditures, statistics illustrating board activities concerning licensing, summary of complaints received and their disposition, number of licenses revoked or suspended, legislative or court action affecting the board, and any other information the department or board considers relevant.

History: En. Sec. 4, Ch. 293, L. 1981; amd. Sec. 10, Ch. 125, L. 1983.

37-1-107 through 37-1-120 reserved.

37-1-121. Duties of director. In addition to his powers and duties under 2-15-112 and 2-15-121, the director of commerce shall:

(1) at the request of a party, appoint impartial legal counsel to conduct hearings before each board within the department whenever any board holds a contested case hearing. The legal counsel appointed shall see that hearings are conducted in a proper and legal manner.

(2) whenever the department conducts an investigation of a complaint of illegal or unethical conduct of a member of a particular profession or occupation as prescribed in 37-1-101(5) and if requested by the appropriate board, appoint an impartial member of that profession or occupation to assist the department in its investigation. The member so appointed may not be a member of the board having jurisdiction over the particular profession or occupation.

(3) hire all personnel to perform the administrative and clerical functions of the department for the boards. Boards within the department have no authority to hire personnel.

(4) approve all contracts and expenditures by boards within the department. No board within the department may enter into a contract or expend funds without the approval of the director.

History: En. 82A-1604 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 14, Ch. 533, L. 1977; R.C.M. 1947, 82A-1604; amd. Sec. 3, Ch. 274, L. 1981; Sec. 37-1-102, MCA 1979; redes. 37-1-121 by Code Commissioner, 1981; amd. Sec. 1, Ch. 165, L. 1985.

Cross-References

Contested cases, Title 2, ch. 4, part 6.

Appointment and qualifications of department heads, 2-15-111.

Duties and powers of department heads, 2-15-112.

37-1-122 through 37-1-129 reserved.

37-1-130. Definition. As used in this part, "board" means each board in this title that regulates a profession or occupation and that is allocated to the department of commerce.

History: En. Sec. 5, Ch. 274, L. 1981.

37-1-131. Duties of boards. Each board within the department shall:

(1) set and enforce standards and rules governing the licensing, certification, registration, and conduct of the members of the particular profession or occupation within its jurisdiction;

(2) sit in judgment in hearings for the suspension, revocation, or denial of a license of an actual or potential member of the particular profession or occupation within its jurisdiction. The hearings shall be conducted by legal counsel when required under 37-1-121(1).

(3) pay to the department its pro rata share of the assessed costs of the department under 37-1-101(6).

History: En. 82A-1605 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 11, Ch. 250, L. 1973; R.C.M. 1947, 82A-1605(1) thru (3); amd. Sec. 3, Ch. 274, L. 1981; Sec. 37-1-103, MCA 1979; redes. 37-1-131 by Code Commissioner, 1981; amd. Sec. 2, Ch. 165, L. 1985.

Cross-References

"Rule" defined, 2-4-102.

Contested case as including licensing, 2-4-102, 2-4-631.

Allocation for administrative purposes only, 2-15-121.

37-1-132. Nominees for appointment to licensing and regulatory boards. Private associations and members of the public may submit to the governor lists of nominees for appointment to professional and occupational licensing and regulatory boards. The governor may consider nominees from the lists when making appointments to such boards.

History: En. Sec. 9, Ch. 244, L. 1981.

Cross-References

Appointing power, Art. VI, sec. 8, Mont. Const.

37-1-133. Board members' compensation and expenses. Unless otherwise provided by law, each member of a board allocated to the department is entitled to receive $50 per day compensation and travel expenses, as provided for in 2-18-501 through 2-18-503, for each day spent on official board business. Board members who conduct official board business in their city of residence are entitled to receive a midday meal allowance, as provided for in 2-18-502. Ex officio board members may not receive compensation but shall receive travel expenses.

History: En. Sec. 1, Ch. 474, L. 1981; amd. Sec. 2, Ch. 123, L. 1983; amd. Sec. 4, Ch. 672, L. 1983.

37-1-134. Licensing boards to establish fees commensurate with costs. All licensing boards allocated to the department shall set fees reasonably related to the respective program area costs. Unless otherwise provided by law, each board within the department may establish fees including but not limited to fees for program areas such as application, examination, renewal, reciprocity, late renewal, and continuing education. Board costs not related to a specific program area may be equitably distributed to program areas as determined by the board. Each board shall maintain records sufficient to support the fees charged for each program area.

History: En. Sec. 1, Ch. 345, L. 1981.

37-1-135. Licensing investigation and review — record access. Any person, firm, corporation, or association that performs background reviews, complaint investigations, or peer reviews pursuant to an agreement or contract with a state professional or occupational licensing board shall make available to the board and the legislative auditor, upon request, any and all records or other information gathered or compiled during the course of the background review, complaint investigation, or peer review.

History: **En. Sec. 1, Ch. 242, L. 1981.**

Cross-References

Procurement of services, Title 18, ch. 8.

37-1-136. Disciplinary authority of boards — injunctions. (1) Each licensing board allocated to the department has the authority, in addition to any other penalty or disciplinary action provided by law, to adopt rules specifying grounds for disciplinary action and rules providing for:

(a) revocation of a license;

(b) suspension of its judgment of revocation on terms and conditions determined by the board;

(c) suspension of the right to practice for a period not exceeding 1 year;

(d) placing a licensee on probation;

(e) reprimand or censure of a licensee; or

(f) taking any other action in relation to disciplining a licensee as the board in its discretion considers proper.

(2) Any disciplinary action by a board shall be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.

(3) Notwithstanding any other provision of law, a board may maintain an action to enjoin a person from engaging in the practice of the occupation or profession regulated by the board until a license to practice is procured. A person who has been enjoined and who violates the injunction is punishable for contempt of court.

History: **En. Sec. 1, Ch. 246, L. 1981.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Contested case procedure, Title 2, ch. 4, part 6.

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

37-1-137. Grounds for disciplinary action as grounds for license denial — conditions to new licenses. (1) Unless otherwise provided by law, grounds for disciplinary action by a board allocated to the department of commerce against a holder of an occupational or professional license may be, under appropriate circumstances, grounds for either issuance of a probationary license for a period not to exceed 1 year or denial of a license to an applicant.

(2) The denial of a license or the issuance of a probationary license under subsection (1) must be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.

History: **En. Sec. 1, Ch. 273, L. 1985.**

37-1-138 through 37-1-140 reserved.

37-1-141. Nonrenewal of license for three years — termination. Unless otherwise provided by statute or rule, a lapsed occupational or professional license that is not renewed within 3 years of the most recent renewal date automatically terminates. The terminated license may not be reinstated, and a new original license must be obtained by passing a qualifying examination and paying the appropriate fee.

History: En. Sec. 1, Ch. 272, L. 1985.

Part 2

Licensure of Criminal Offenders

Part Cross-References

Rights of convicted, Art. II, sec. 28, Mont. Const.

Gambling qualifications for licensure, 23-5-176.

Building and loan agent's license revocable for violation of criminal statutes, 32-2-409.

No outfitter's license issued to criminal offender, 37-47-302.

Effect of conviction, 46-18-801.

37-1-201. Purpose. It is the public policy of the legislature of the state of Montana to encourage and contribute to the rehabilitation of criminal offenders and to assist them in the assumption of the responsibilities of citizenship. The legislature finds that the public is best protected when such offenders are given the opportunity to secure employment or to engage in a meaningful occupation, while licensure must be conferred with prudence to protect the interests of the public.

History: En. 66-4001 by Sec. 1, Ch. 490, L. 1975; R.C.M. 1947, 66-4001.

37-1-202. Intent and policy. It is the intent of the legislature and the declared policy of the state that occupational licensure be granted or revoked as a police power of the state in its protection of the public health, safety, and welfare.

History: En. 66-4002 by Sec. 2, Ch. 490, L. 1975; R.C.M. 1947, 66-4002.

37-1-203. Conviction not a sole basis for denial. Criminal convictions shall not operate as an automatic bar to being licensed to enter any occupation in the state of Montana. No licensing authority shall refuse to license a person solely on the basis of a previous criminal conviction; provided, however, where a license applicant has been convicted of a criminal offense and such criminal offense relates to the public health, welfare, and safety as it applies to the occupation for which the license is sought, the licensing agency may, after investigation, find that the applicant so convicted has not been sufficiently rehabilitated as to warrant the public trust and deny the issuance of a license.

History: En. 66-4003 by Sec. 3, Ch. 490, L. 1975; R.C.M. 1947, 66-4003.

37-1-204. Statement of reasons for denial. When a licensing agency prohibits an applicant from being licensed wholly or partially on the basis of a criminal conviction, the agency shall state explicitly in writing the reasons for the decision.

History: En. 66-4004 by Sec. 4, Ch. 490, L. 1975; R.C.M. 1947, 66-4004.

Cross-References

Findings of fact required, 2-4-623.

Application of contested case procedure to licensing, 2-4-631.

37-1-205. Licensure on completion of supervision. Completion of probation or parole supervision without any subsequent criminal conviction shall be evidence of rehabilitation; provided, however, that the facts surrounding the situation that led to the probation or parole supervision may be considered as they relate to the occupation for which a license is sought and provided that nothing herein shall be construed to prohibit licensure of a person while he is under state supervision if the licensing agency finds insufficient evidence to preclude such licensure.

History: En. 66-4005 by Sec. 5, Ch. 490, L. 1975; R.C.M. 1947, 66-4005.

Cross-References

Supervision of probationers and parolees, Title 46, ch. 23, part 10.

CHAPTER 2

GENERAL PROVISIONS RELATING TO HEALTH CARE PRACTITIONERS

Part 1 — Dispensing of Drugs

37-2-101. Definitions.
37-2-102. Practices declared unlawful between drug companies and medical practitioners.
37-2-103. Practices declared unlawful between medical practitioners and pharmacies.
37-2-104. Dispensing of drugs by medical practitioners unlawful — exceptions.
37-2-105. Duty of county attorneys.
37-2-106. Existing ownership of pharmacy.
37-2-107 through 37-2-110 reserved.
37-2-111. Duty to report prescriptions issued to drug addicts.

Part 2 — Nonliability for Peer Review

37-2-201. Nonliability— evidential privilege — application to nonprofit corporations.

Part 3 — Miscellaneous Provisions

37-2-301. Duty to report cases of communicable disease.
37-2-302. Gunshot or stab wounds to be reported.
37-2-303. Immunity from liability.
37-2-304 through 37-2-310 reserved.
37-2-311. Report to department of justice by physician.
37-2-312. Physician's immunity from liability.

Part 1

Dispensing of Drugs

Part Cross-References

Pharmacy, Title 37, ch. 7.

Dangerous drugs, Title 45, ch. 9.

Model Drug Paraphernalia Act, Title 45, ch. 10.

Controlled substances, Title 50, ch. 32.

37-2-101. Definitions. As used in this part, the following definitions apply:

(1) "Medical practitioner" means any person licensed by the state of Montana to engage in the practice of medicine, dentistry, osteopathy, podiatry,

optometry, or a nursing specialty as described in 37-8-202(5) and in the licensed practice to administer or prescribe drugs.

(2) "Drug" means any article:

(a) recognized in the official United States Pharmacopoeia/National Formulary or in any supplement to the pharmacopoeia/formulary;

(b) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man;

(c) intended to affect the structure or any function of the body of man;

(d) intended for use as a component of any article described in subsection (a), (b), or (c) of this subsection (2), but the term does not include any device or any components of a device.

(3) "Device" means any instrument, apparatus, or contrivance intended:

(a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man;

(b) to affect the structure or any function of the body of man.

(4) "Pharmacy" means an establishment which engages in the sale of drugs requiring a prescription.

(5) "Community pharmacy", when used in relation to a medical practitioner, means a pharmacy situated within 10 miles of any place at which the medical practitioner maintains an office for professional practice.

(6) "Drug company" means any person engaged in the manufacturing, processing, packaging, or distribution of drugs; but the term does not include a pharmacy.

(7) "Person" means any individual and any partnership, firm, corporation, association, or other business entity.

(8) "State" means the state of Montana or any political subdivision thereof.

History: En. Sec. 1, Ch. 311, L. 1971; R.C.M. 1947, 27-901; amd. Sec. 2, Ch. 379, L. 1981; amd. Sec. 1, Ch. 588, L. 1987; amd. Sec. 43, Ch. 83, L. 1989; amd. Sec. 1, Ch. 444, L. 1989.

Compiler's Comments

1989 Amendments: Chapter 83, in (1) deleted "chiropody" and deleted parentheses around "podiatry".

Chapter 444, in definition of medical practitioner inserted "or a nursing specialty as described in 37-8-202(5)"; and made minor changes in phraseology. Amendment effective July 1, 1989.

37-2-102. Practices declared unlawful between drug companies and medical practitioners. It shall be unlawful:

(1) for a drug company to give or sell to a medical practitioner any legal or beneficial interest in the company or in the income thereof with the intent or for the purpose of inducing such medical practitioner to prescribe to his patients the drugs of the company. The giving or selling of such interest by the company to a medical practitioner without such interest first having been publicly offered to the general public shall be prima facie evidence of such intent or purpose.

(2) for a medical practitioner to acquire or own a legal or beneficial interest in any drug company, provided it shall not be unlawful for a medical practitioner to acquire or own such an interest solely for investment; and the acquisition of an interest which is publicly offered to the general public shall be prima facie evidence of its acquisition solely for investment;

(3) for a medical practitioner to solicit or to knowingly receive from a drug company or for a drug company to pay or to promise to pay to a medical practitioner any rebate, refund, discount, commission, or other valuable consideration for, on account of, or based upon the volume of wholesale or retail sales, at any place, of drugs manufactured, processed, packaged, or distributed by the company.

History: **En. Sec. 2, Ch. 311, L. 1971; R.C.M. 1947, 27-902.**

37-2-103. Practices declared unlawful between medical practitioners and pharmacies. (1) It shall be unlawful for a medical practitioner to own, directly or indirectly, a community pharmacy. Nothing in this subsection shall prohibit a medical practitioner from dispensing a drug which he is permitted to dispense under 37-2-104.

(2) It shall be unlawful for a medical practitioner directly or indirectly to solicit or to knowingly receive from a community pharmacy or for a community pharmacy knowingly to pay or promise to pay to a medical practitioner any rebate, refund, discount, commission, or other valuable consideration for, on account of, or based upon income received or resulting from the sale or furnishing by such community pharmacy of drugs to patients of any medical practitioner.

History: **En. Sec. 4, Ch. 311, L. 1971; R.C.M. 1947, 27-904.**

37-2-104. Dispensing of drugs by medical practitioners unlawful — exceptions. (1) Except as otherwise provided by this section, it is unlawful for a medical practitioner to engage, directly or indirectly, in the dispensing of drugs.

(2) Nothing in this section prohibits:

(a) a medical practitioner from furnishing a patient any drug in an emergency;

(b) the administration of a unit dose of a drug to a patient by or under the supervision of a medical practitioner;

(c) dispensing a drug to a patient by a medical practitioner whenever there is no community pharmacy available to the patient;

(d) the dispensing of drugs occasionally, but not as a usual course of doing business, by a medical practitioner;

(e) a medical practitioner from dispensing drug samples;

(f) the dispensing of factory prepackaged oral contraceptives by a registered nurse employed by a family planning clinic under contract with the department of health and environmental sciences if the dispensing is in accordance with:

(i) a physician's written protocol specifying the circumstances under which dispensing is appropriate; and

(ii) the drug labeling, storage, and recordkeeping requirements of the board of pharmacy.

History: **En. Sec. 3, Ch. 311, L. 1971; R.C.M. 1947, 27-903; amd. Sec. 1, Ch. 22, L. 1979; amd. Sec. 1, Ch. 472, L. 1989.**

Compiler's Comments

1989 Amendment: Inserted (2)(f) allowing dispensing of oral contraceptives under certain circumstances; and made minor change in phraseology. Amendment effective April 8, 1989.

37-2-105. Duty of county attorneys. It shall be the duty of the county attorneys in the counties of the state, under the direction of the attorney general, to institute appropriate proceedings to prevent and restrain such violations. Such proceedings may be by way of complaint setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. Upon the filing of a complaint under this section and the service thereof upon the defendants named therein, the court shall proceed as soon as possible to the hearing and determination of the action.

History: En. Sec. 5, Ch. 311, L. 1971; R.C.M. 1947, 27-905.

Cross-References

Duty of Attorney General to supervise County Attorneys, 2-15-501.

Duties of County Attorneys generally, Title 7, ch. 4, part 27.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20).

Injunctions generally, Title 27, ch. 19.

37-2-106. Existing ownership of pharmacy. The provisions of 37-2-103(1) shall not apply to a medical practitioner as to any interest which he owns as set forth in said subsection on July 1, 1971, provided that transfer of this interest to another person shall result in immediate termination of such exemption.

History: En. Sec. 6, Ch. 311, L. 1971; R.C.M. 1947, 27-906.

Cross-References

Store license for pharmacy, 37-7-321.

37-2-107 through 37-2-110 reserved.

37-2-111. Duty to report prescriptions issued to drug addicts. (1) A physician duly licensed to practice medicine in Montana who prescribes for or dispenses, administers, or in any manner gives opium or coca leaves or any of their derivatives, salts, preparations, or compounds to a person known to him or believed by him to be an habitual user or a drug addict shall, within 48 hours, report the name, address, physical and mental condition, and any necessary substantial information regarding such person to the county attorney of the county in which that physician prescribes, dispenses, administers, or in any manner gives any of the drugs mentioned in this section.

(2) An "habitual user of drugs" or "drug addict" is defined as follows: a person who has needed or demanded the prescribing, dispensing, or administering or in any manner the giving of opium or coca leaves or any of their derivatives, salts, preparations, or compounds at more or less regular intervals for 30 consecutive days prior to the day that person applies to a physician for the prescribing, dispensing, administering, or the giving in any way of any such drugs or their derivatives.

(3) If a physician prescribes for or dispenses, administers, or in any manner gives any of the drugs mentioned in this section daily for more than 30 days to a person, that physician shall register with the county attorney the name of such person, together with a statement of the physical and mental condition of such person and a prognosis as to the probable future necessity for continuing to prescribe for, dispense, administer, or give such drugs to such person, and the prognosis shall include an estimate as to the length of time which, according to the judgment of the physician, will be required to

remove the necessity of administering the aforesaid narcotic drugs to such person.

(4) The county attorney shall, upon receipt of such notice, immediately file a complaint against such habitual user of drugs or drug addict in the district court of his county.

(5) A person violating any of the provisions of this section is guilty of a misdemeanor and upon conviction for each violation shall be sentenced to a term of imprisonment not to exceed 6 months in the county jail, a fine not to exceed $500, or both.

History: En. Sec. 6, Ch. 202, L. 1921; re-en. Sec. 3194, R.C.M. 1921; re-en. Sec. 3194, R.C.M. 1935; amd. Sec. 8, Ch. 101, L. 1977; R.C.M. 1947, 66-1516.

Cross-References

Duties of County Attorneys generally, Title 7, ch. 4, part 27.

Part 2

Nonliability for Peer Review

Part Cross-References

Licensing investigation and review — record access, 37-1-135.

Health care information, Title 50, ch. 16.

37-2-201. Nonliability — evidential privilege — application to nonprofit corporations. (1) No member of a utilization review or medical ethics review committee of a hospital or long-term care facility or of a professional utilization committee, peer review committee, medical ethics review committee, or professional standards review committee of a society composed of persons licensed to practice a health care profession is liable in damages to any person for any action taken or recommendation made within the scope of the functions of the committee if the committee member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to him after reasonable effort to obtain the facts of the matter for which the action is taken or a recommendation is made.

(2) The proceedings and records of professional utilization, peer review, medical ethics review, and professional standards review committees are not subject to discovery or introduction into evidence in any proceeding. However, information otherwise discoverable or admissible from an original source is not to be construed as immune from discovery or use in any proceeding merely because it was presented during proceedings before the committee, nor is a member of the committee or other person appearing before it to be prevented from testifying as to matters within his knowledge, but he cannot be questioned about his testimony or other proceedings before the committee or about opinions or other actions of the committee or any member thereof.

(3) This section also applies to any member, agent, or employee of a nonprofit corporation engaged in performing the functions of a peer review, medical ethics review, or professional standards review committee.

History: En. 66-1052 by Sec. 1, Ch. 226, L. 1975; amd. Sec. 1, Ch. 267, L. 1977; R.C.M. 1947, 66-1052; amd. Sec. 2, Ch. 22, L. 1979; amd. Sec. 1, Ch. 380, L. 1989.

Compiler's Comments

1989 Amendment: In four places inserted reference to medical ethics review.

Cross-References

Libel and slander, Title 27, ch. 1, part 8.

Medical legal panel created, 27-6-104.

Reporting obligations of physicians, Title 37, ch. 3, part 4.

Part 3

Miscellaneous Provisions

37-2-301. Duty to report cases of communicable disease. (1) If a physician or other practitioner of the healing arts examines or treats a person whom he believes has a communicable disease or a disease declared reportable by the department of health and environmental sciences, he shall immediately report the case to the local health officer. The report shall be in the form and contain information prescribed by the department.

(2) A person who violates the provisions of this section or rules adopted by the department under the provisions of this section is guilty of a misdemeanor. On conviction, he shall be fined not less than $10 or more than $500, imprisoned for not more than 90 days, or both. Each day of violation constitutes a separate offense. Fines, except those collected by a justice's court, shall be paid to the county treasurer of the county in which the violation occurs.

History: **(1)En. Sec. 91, Ch. 197, L. 1967; Sec. 69-4514, R.C.M. 1947; (2)En. Sec. 96, Ch. 197, L. 1967; amd. Sec. 108, Ch. 349, L. 1974; amd. Sec. 3, Ch. 273, L. 1975; Sec. 69-4519, R.C.M. 1947; R.C.M. 1947, 69-4514, 69-4519(part); amd. Sec. 21, Ch. 557, L. 1987.**

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

"Communicable disease" defined, 50-1-101.

Powers of Department relating to communicable diseases, 50-1-202.

Report of exposure to infectious disease, Title 50, ch. 16, part 7.

37-2-302. Gunshot or stab wounds to be reported. The physician, nurse, or other person licensed to practice a health care profession treating the victim of a gunshot wound or stabbing shall make a report to a law enforcement officer by the fastest possible means. Within 24 hours after initial treatment or first observation of the wound, a written report shall be submitted, including the name and address of the victim, if known, and shall be sent by regular mail.

History: **En. 66-1050 by Sec. 1, Ch. 303, L. 1974; R.C.M. 1947, 66-1050.**

37-2-303. Immunity from liability. A physician or other person reporting pursuant to 37-2-302 shall be presumed to be acting in good faith and in so doing shall be immune from any liability, civil or criminal, unless he acted in bad faith or with malicious purpose.

History: **En. 66-1051 by Sec. 2, Ch. 303, L. 1974; R.C.M. 1947, 66-1051.**

Cross-References

Libel and slander, Title 27, ch. 1, part 8.

37-2-304 through 37-2-310 reserved.

37-2-311. Report to department of justice by physician. (1) Any physician who diagnoses a physical or mental condition that, in the physician's judgment, will significantly impair a person's ability to safely operate a motor vehicle may voluntarily report the person's name and other information relevant to his condition to the department of justice. The department, upon receiving the report, shall require the person so reported to be examined in the manner provided for in 61-5-110 and 61-5-207.

(2) (a) The physician's report may be introduced as evidence in any proceeding involving the granting, suspension, or revocation of the person's driver's license before the department or a court.

(b) The physician's report may not be utilized in a criminal proceeding or in a civil proceeding, other than as provided in this subsection, without the consent of the patient.

History: En. Sec. 1, Ch. 126, L. 1983.

Cross-References

Doctor-patient privilege, 26-1-805.

Revocation, suspension, or cancellation of driver's licenses, Title 61, ch. 5, part 2.

37-2-312. Physician's immunity from liability. Any physician reporting in good faith is immune from any liability, civil or criminal, that otherwise might result by reason of his actions pursuant to 37-2-311 except for damages occasioned by gross negligence. No action may be brought against a physician for not making a report pursuant to 37-2-311.

History: En. Sec. 2, Ch. 126, L. 1983.

Cross-References

Libel and slander, Title 27, ch. 1, part 8.

Report of exposure to infectious disease — immunity from liability, 50-16-704.

CHAPTER 3

MEDICINE

Part 1 — General

37-3-101. Purpose.
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Part 3 — Licensing

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37-3-307. Qualifications for licensure — temporary certificate.
37-3-308. Examination and application fees — further tax forbidden.
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37-3-310. Notice of change of address or name — applicants — licensees.
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37-3-322. Unprofessional conduct.
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Part 4 — Reporting Obligations

37-3-401. Report of incompetence or unprofessional conduct.
37-3-402. Insurer to report to board.
37-3-403. Report of prohibition or limitation on practice by hospital.
37-3-404. Immunity of person providing information.
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Chapter Cross-References

Doctor-patient privilege, 26-1-805.

Limits on liability for emergency care rendered at scene of accident or emergency, 27-1-714.

Limits on liability of health care provider in emergency situations, 27-1-734.

Montana Medical Legal Panel Act, Title 27, ch. 6.

Professional service corporations, Title 35, ch. 4.

General provisions relating to health care practitioners, Title 37, ch. 2.

Limitations on dentistry and oral surgery practices involving general anesthesia, 37-4-511.

Regulation of prescriptions, Title 37, ch. 7, part 4.

Optometry laws not applicable to physicians and surgeons, 37-10-102.

Physicians' assistants, Title 37, ch. 20.

Validity of consent to medical treatment, Title 41, ch. 1, part 4.

Physicians to report child abuse, 41-3-201.

Hospitals and related facilities, Title 50, ch. 5.

Family practice residency training, Title 50, ch. 5, part 6.

Emergency medical services, Title 50, ch. 6.

Health care information, Title 50, ch. 16.

Montana Abortion Control Act, Title 50, ch. 20.

Part 1

General

Part Cross-References

Duty of physician, resident, and intern to report violation of Montana Elder Abuse Prevention Act, 53-5-511.

37-3-101. Purpose. It is hereby declared, as a matter of legislative policy in the state of Montana, that the practice of medicine within the state of Montana is a privilege granted by the legislative authority and is not a natural right of individuals and that it is deemed necessary, as a matter of such policy and in the interests of the health, happiness, safety, and welfare of the people of Montana, to provide laws and provisions covering the granting of that privilege and its subsequent use, control, and regulation to the end that the public shall be properly protected against unprofessional, improper, unauthorized, and unqualified practice of medicine and to license competent physicians to practice medicine and thereby provide for the health needs of the people of Montana.

History: En. Sec. 2, Ch. 338, L. 1969; R.C.M. 1947, 66-1011.

37-3-102. Definitions. (1) Unless the context requires otherwise, in this chapter the following definitions apply:

(a) "Practice of medicine" means the diagnosis, treatment, or correction of or the attempt to or the holding of oneself out as being able to diagnose, treat, or correct human conditions, ailments, diseases, injuries, or infirmities, whether physical or mental, by any means, methods, devices, or instrumentalities. If a person who does not possess a license to practice medicine in this state under this chapter and who is not exempt from the licensing requirements of this chapter performs acts constituting the practice of medicine, he is practicing medicine in violation of this chapter.

(b) "Board" means the Montana state board of medical examiners provided for in 2-15-1841.

(c) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(2) An "approved medical school" is a school which either is accredited by the American osteopathic association or conforms to the minimum education standards established by the council on medical education of the American medical association or successors for medical schools or is equivalent in the sound discretion of the board. The board may, on investigation of the education standards and facilities, approve any medical school, including foreign medical schools.

(3) An "approved internship" is an internship training program of at least 1 year in a hospital which is either approved for intern training by the American osteopathic association or conforms to the minimum standards for intern training established by the council on medical education of the American medical association or successors. However, the board shall have the authority, upon investigation, to approve any other internship.

(4) An "approved residency" is a residency training program in a hospital conforming to the minimum standards for residency training established by the council on medical education of the American medical association or successors or approved for residency training by the American osteopathic association. However, the board shall have the authority upon investigation to approve any other residency.

History: (1)En. Sec. 3, Ch. 338, L. 1969; amd. Sec. 1, Ch. 203, L. 1971; amd. Sec. 1, Ch. 97, L. 1974; amd. Sec. 91, Ch. 350, L. 1974; Sec. 66-1012, R.C.M. 1947; (2)En. Sec. 19, Ch. 338, L. 1969; amd. Sec. 5, Ch. 203, L. 1971; amd. Sec. 102, Ch. 350, L. 1974; Sec. 66-1028, R.C.M. 1947; (3)En. Sec. 20, Ch. 338, L. 1969; amd. Sec. 6, Ch. 203, L. 1971; Sec. 66-1029, R.C.M. 1947; (4)En. Sec. 21, Ch. 338, L. 1969; amd. Sec. 7, Ch. 203, L. 1971; Sec. 66-1030, R.C.M. 1947; R.C.M. 1947, 66-1012(1), 66-1028, 66-1029, 66-1030(part); amd. Sec. 3, Ch. 274, L. 1981.

37-3-103. Exemptions from licensing requirements. (1) This chapter does not prohibit or require a license with respect to any of the following acts:

(a) the gratuitous rendering of services in cases of emergency or catastrophe;

(b) the rendering of services in this state by a physician lawfully practicing medicine in another state or territory. However, if the physician does not limit the services to an occasional case or if he has any established or regularly used hospital connections in this state or maintains or is provided with, for his regular use, an office or other place for rendering the services, he must possess a license to practice medicine in this state.

(c) the practice of dentistry under the conditions and limitations defined by the laws of this state;

(d) the practice of podiatry under the conditions and limitations defined by the laws of this state;

(e) the practice of optometry under the conditions and limitations defined by the laws of this state;

(f) the practice of osteopathy under the conditions and limitations defined in chapter 5 of this title for those doctors of osteopathy who do not receive a physician's certificate under this chapter;

(g) the practice of chiropractic under the conditions and limitations defined by the laws of this state;

(h) the practice of Christian Science, with or without compensation, and ritual circumcisions by rabbis;

(i) the performance by commissioned medical officers of the armed forces of the United States, of the United States public health service, or of the United States veterans' administration of their lawful duties in this state as officers;

(j) the rendering of nursing services by registered or other nurses in the lawful discharge of their duties as nurses or of midwife services by registered nurse-midwives under the supervision of a licensed physician;

(k) the rendering of services by interns or resident physicians in a hospital or clinic in which they are training, subject to the conditions and limitations of this chapter. The board may require a resident physician to be licensed if he otherwise engages in the practice of medicine in the state of Montana.

(l) the rendering of services by a physical therapist, technician, or other paramedical specialist under the appropriate amount and type of supervision of a person licensed under the laws of this state to practice medicine, but this exemption does not extend the scope of a paramedical specialist;

(m) the rendering of services by a physician assistant-certified in accordance with Title 37, chapter 20;

(n) the practice by persons licensed under the laws of this state to practice a limited field of the healing arts, and not specifically designated, under the conditions and limitations defined by law;

(o) the execution of a death sentence pursuant to 46-19-103; and

(p) the practice of direct-entry midwifery. For the purpose of this section, the practice of direct-entry midwifery means the advising, attending, or assisting of a woman during pregnancy, labor, natural childbirth, or the postpartum period. A direct-entry midwife may not dispense or administer a prescription drug, as those terms are defined in 37-7-101.

(2) Licensees referred to in subsection (1) of this section who are licensed to practice a limited field of healing arts shall confine themselves to the field for which they are licensed or registered and to the scope of their respective licenses and, with the exception of those licensees who hold a medical degree, may not use the title "M.D." or any word or abbreviation to indicate or to induce others to believe that they are engaged in the diagnosis or treatment of persons afflicted with disease, injury, or defect of body or mind except to the extent and under the conditions expressly provided by the law under which they are licensed.

History: Ap. p. Sec. 3, Ch. 338, L. 1969; amd. Sec. 1, Ch. 203, L. 1971; amd. Sec. 1, Ch. 97, L. 1974; amd. Sec. 91, Ch. 350, L. 1974; Sec. 66-1012, R.C.M. 1947; Ap. p. Sec. 21, Ch. 338,

L. 1969; amd. Sec. 7, Ch. 203, L. 1971; Sec. 66-1030, R.C.M. 1947; R.C.M. 1947, 66-1012(2), (3), 66-1030(part); amd. Sec. 7, Ch. 380, L. 1981; amd. Sec. 1, Ch. 411, L. 1983; amd. Sec. 8, Ch. 97, L. 1989; amd. Sec. 3, Ch. 493, L. 1989.

Compiler's Comments

1989 Amendments: Chapter 97, in (1)(m) substituted "physician assistant-certified" for "physician's assistant".

Chapter 493 inserted (1)(p) relating to practice of direct-entry midwifery. Amendment effective April 11, 1989.

Cross-References

Dentistry and dental hygiene, Title 37, ch. 4.

Osteopathy, Title 37, ch. 5.

Podiatry, Title 37, ch. 6.

Nursing, Title 37, ch. 8.

Optometry, Title 37, ch. 10.

Physical therapy, Title 37, ch. 11.

Chiropractic, Title 37, ch. 12.

Physician assistant-certified defined, 37-20-401.

Part 2

Board of Medical Examiners

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1841.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

Power to regulate acupuncture, Title 37, ch. 13, part 2.

37-3-201. Organization. The board shall, at the first meeting each year, elect from among its members a president, vice-president, and secretary. The board shall adopt a seal in which appear the words "The Board of Medical Examiners of Montana" and the further words "Official Seal", and acts, rules, orders, certificates, and licenses shall be authenticated by the seal.

History: En. Sec. 6, Ch. 338, L. 1969; amd. Sec. 93, Ch. 350, L. 1974; R.C.M. 1947, 66-1015.

Cross-References

Seal defined, 1-4-201.

Manner of making a seal, 1-4-202.

37-3-202. Policy. The board shall maintain reasonable and continuing supervision and surveillance over all licensees under this chapter to ensure that such licensees maintain standards of conduct and exercise the privileges granted hereunder in the greatest public interest and to carry out the purposes and provisions of this chapter.

History: En. Sec. 7, Ch. 338, L. 1969; R.C.M. 1947, 66-1016.

37-3-203. Powers and duties. The board may:

(1) adopt rules necessary or proper to carry out parts 1 through 3 of this chapter; the rules shall be fair, impartial, and nondiscriminatory;

(2) hold hearings and take evidence in matters relating to the exercise and performance of the powers and duties vested in the board;

(3) aid the county attorneys of this state in the enforcement of parts 1 through 3 of this chapter and the prosecution of persons, firms, associations, or corporations charged with violations of parts 1 through 3 of this chapter;

(4) establish a program to assist and rehabilitate licensed physicians who are found to be physically or mentally impaired by habitual intemperance or the excessive use of narcotic drugs, alcohol, or any other drug or substance; and

(5) select an executive secretary to be hired by the department to:

(a) provide services to the board in connection with the board's duties under this chapter;

(b) assist in prosecution and matters of license discipline under this chapter; and

(c) administer the board's affairs.

History: **En. Sec. 8, Ch. 338, L. 1969; amd. Sec. 94, Ch. 350, L. 1974; R.C.M. 1947, 66-1017; amd. Sec. 1, Ch. 83, L. 1981; amd. Sec. 1, Ch. 283, L. 1987; amd. Sec. 1, Ch. 135, L. 1989.**

Compiler's Comments

1989 Amendment: Inserted (5) relating to an executive secretary.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

Duties of boards, 37-1-131.

Effect of chemical dependency, 37-3-322, 37-3-323.

Habitual intemperance or excessive use of narcotic drugs defined as unprofessional conduct, 37-3-322.

Approval of class for optometric use of drugs, 37-10-304.

Transfer of funds derived from licensure of physical therapists, 37-11-203.

37-3-204. Meetings. The board shall hold meetings for examinations and for other business properly before the board at least twice annually at times and places set by the board. The president of the board may call special meetings he considers advisable or necessary. Four members of the board constitute a quorum.

History: **En. Sec. 9, Ch. 338, L. 1969; amd. Sec. 95, Ch. 350, L. 1974; R.C.M. 1947, 66-1018.**

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Duty of Department to provide facilities, 37-1-101.

Board members' compensation and expenses, 37-1-133.

Disrupting meeting as disorderly conduct, 45-8-101.

37-3-205. Records. The department shall keep a record of the board's proceedings and also records of applicants for certificates and a register of licenses. The register is prima facie evidence of the matters contained in it.

History: **En. Sec. 10, Ch. 338, L. 1969; amd. Sec. 96, Ch. 350, L. 1974; R.C.M. 1947, 66-1019.**

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public records, Title 2, ch. 6.

Preservation of records, Title 22, ch. 3, part 2.

Duty of Department to keep records, 37-1-101.

Licensing investigation and review — access to records, 37-1-135.

37-3-206. Compensation and expenses of members. Each member of the board of medical examiners shall receive compensation and travel expenses as provided for in 37-1-133.

History: **En. Sec. 11, Ch. 338, L. 1969; amd. Sec. 1, Ch. 165, L. 1974; amd. Sec. 97, Ch. 350, L. 1974; amd. Sec. 30, Ch. 439, L. 1975; R.C.M. 1947, 66-1020; amd. Sec. 7, Ch. 474, L. 1981.**

37-3-207 through 37-3-210 reserved.

37-3-211. Executive secretary. To perform the services provided for in 37-3-203(5), the department shall hire a person selected by the board who:

(1) is a citizen of the United States;

(2) is of good moral character; and

(3) holds at least a postgraduate degree from an accredited college or university or has equivalent experience. The degree or experience need not be in the field of medicine.

History: **En. Sec. 2, Ch. 135, L. 1989.**

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-3-301. License required — kinds of certificates. (1) Prior to the issuance of a license, an applicant may not engage in the practice of medicine in this state.

(2) The department may issue two forms of certificates under the board's seal: the physician's certificate and the temporary certificate. The physician's certificate shall be signed by the president, but the temporary certificate may be signed by any board member. The board shall decide which certificate to issue. These certificates shall be designated as:

(a) physician's certificate, which is subject to annual registration;

(b) temporary certificate, which is subject to specifications and limitations imposed by the board.

History: **(1)En. Sec. 25, Ch. 338, L. 1969; amd. Sec. 105, Ch. 350, L. 1974; Sec. 66-1034, R.C.M. 1947; (2)En. Sec. 12, Ch. 338, L. 1969; amd. Sec. 98, Ch. 350, L. 1974; Sec. 66-1021, R.C.M. 1947; R.C.M. 1947, 66-1021, 66-1034(part).**

37-3-302. Certificate to specify practice permitted. The certificates issued shall state the extent and character of the practice that is permitted and shall be in the form prescribed by the board. Neither the privileges granted to nor the obligations imposed upon licensees may be altered except by legislative enactment or by action of the board duly authorized hereunder.

History: **En. Sec. 13, Ch. 338, L. 1969; R.C.M. 1947, 66-1022.**

37-3-303. Practice authorized by physician's certificate. The physician's certificate authorizes the holder to perform one or more of the acts embraced in 37-3-102(1)(a) in a manner reasonably consistent with his training, skill, and experience.

History: **En. Sec. 14, Ch. 338, L. 1969; amd. Sec. 3, Ch. 203, L. 1971; R.C.M. 1947, 66-1023; amd. Sec. 1, Ch. 323, L. 1979.**

37-3-304. Practice authorized by temporary certificate. The temporary certificate, which may be issued to any citizen or to an alien otherwise qualified for a physician's certificate and which may be issued for a period not to exceed 1 year, subject to renewal for additional periods of 1 year but not to exceed five such renewals, at the discretion of the board, authorizes the holder to perform one or more of the acts embraced in 37-3-102(1)(a) in a manner reasonably consistent with his training, skill, and experience, subject, nevertheless, to all specifications, conditions, and limitations imposed by the board.

History: **En. Sec. 15, Ch. 338, L. 1969; R.C.M. 1947, 66-1024.**

37-3-305. Qualifications for licensure. (1) No person may be granted a physician's certificate to practice medicine in this state unless he:

(a) is of good moral character, as determined by the board;

(b) is a graduate of an approved medical school as defined in 37-3-102;

(c) has completed an approved internship of at least 1 year or, in the opinion of the board, has had experience or training which is at least the equivalent of 1 year internship;

(d) has made a personal appearance before the board unless such appearance has been specifically waived by the board; and

(e) is able to communicate, in the opinion of the board, in the English language.

(2) The board may authorize the department to issue the license subject to terms of probation or other conditions or limitations set by the board or may refuse a license if the applicant has committed unprofessional conduct or is otherwise unqualified.

(3) No person may be granted a temporary license to practice medicine in this state unless he:

(a) is of good moral character, as determined by the board;

(b) is a graduate of an approved medical school as defined in 37-3-102;

(c) has completed an approved internship of at least 1 year or, in the opinion of the board, has had experience or training which is at least the equivalent of 1 year internship;

(d) has made a personal appearance before at least one member of the board; and

(e) is able, in the opinion of the board, to communicate in the English language.

History: En. Sec. 18, Ch. 338, L. 1969; amd. Sec. 3, Ch. 168, L. 1971; amd. Sec. 101, Ch. 350, L. 1974; amd. Sec. 1, Ch. 213, L. 1977; R.C.M. 1947, 66-1027(1), (2); amd. Sec. 2, Ch. 323, L. 1979.

Cross-References

Licensing investigation and review — record access, 37-1-135.

37-3-306. Physician's certificate — examination — reciprocity and endorsement. (1) The board may authorize the department to issue to an applicant a physician's certificate, certificate by reciprocity, or certificate by endorsement only on the basis of:

(a) passing an examination given and graded by the department, subject to 37-1-101;

(b) certification of record or other certificate of examination issued to or for the applicant by the national board of medical examiners or successors, by the federation licensing examination committee or successors, by the national board of examiners for osteopathic physicians and surgeons, incorporated, or by the medical council of Canada or successors if the applicant is a graduate of a Canadian medical school which has been approved by the medical council of Canada or successors, certifying that the applicant has passed an examination given by this board; or

(c) a valid, unsuspended, and unrevoked license or certificate issued to the applicant on the basis of an examination by an examining board under the laws of another state or territory of the United States or of the District of

Columbia or of a foreign country whose licensing standards at the time the license or certificate was issued were, in the judgment of the board, essentially equivalent to those of this state for granting a license to practice medicine, if under the scope of the license or certificate the applicant was authorized to practice medicine in the other state, territory, or country.

(2) No applicant who applies for a license on the basis of an examination and fails the examination may be granted a license based on credentials from another state, territory, or foreign country or on a certificate issued by the national board of medical examiners or successors, by the federation licensing examination committee or successors, or by the medical council of Canada or successors.

(3) The board may adopt reciprocity or endorsement requirements current with changes in standards in the practice of medicine.

(4) The board may, in the case of an applicant for admission by reciprocity or endorsement, require a written or oral examination of the applicant.

(5) The board may require that graduates of foreign medical schools pass an examination given by the education council for foreign medical graduates or successors.

(6) Holders of the degree of doctor of osteopathy granted in 1955 or before will be certified only on the basis of taking and passing the examination given by the department, subject to 37-1-101. Holders of the degree of doctor of osteopathy granted after 1955 will be certified in the same manner as provided above for physicians.

History: En. Sec. 16, Ch. 338, L. 1969; amd. Sec. 4, Ch. 203, L. 1971; amd. Sec. 1, Ch. 403, L. 1973; amd. Sec. 2, Ch. 166, L. 1974; amd. Sec. 99, Ch. 350, L. 1974; R.C.M. 1947, 66-1025; amd. Sec. 1, Ch. 438, L. 1979.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Licensing of doctors of osteopathy, Title 37, ch. 5, part 3.

37-3-307. Qualifications for licensure — temporary certificate. (1) The board may authorize the department to issue to an applicant a temporary certificate to practice medicine on the basis of:

(a) passing an examination given and graded by the department, subject to 37-1-101;

(b) certification of record or other certificate of examination issued to or for the applicant by the national board of medical examiners or successors, by the federation licensing examination committee or successors, or by the medical council of Canada or successors if the applicant is a graduate of a Canadian medical school which has been approved by the medical council of Canada or successors, certifying that the applicant has passed an examination given by the board; or

(c) a valid, unsuspended, and unrevoked license or certificate issued to the applicant on the basis of an examination by an examining board under the laws of another state or territory of the United States or of the District of Columbia or of a foreign country whose licensing standards at the time the license or certificate was issued were essentially equivalent, in the judgment of the board, to those of this state at the time for granting a license to practice medicine; and

(d) being a graduate of an approved medical school who has completed 1 year of internship or its equivalent and being of good moral character and good conduct.

(2) The board may require that graduates of foreign medical schools pass the examination given by the education council for foreign medical graduates or successors.

(3) A temporary license may be issued to a physician employed by a public institution who is practicing under the direction of a licensed physician. The board may authorize the department to issue a temporary license subject to terms of probation or other conditions or limitations set by the board or may refuse a temporary license to a person if he has committed unprofessional conduct. The issuance of a temporary certificate imposes no future obligation or duty on the part of the board to grant full licensure or to renew or extend the temporary license. The board may, in the case of an applicant for a temporary certificate, require a written, oral, or practical examination of the applicant.

History: (1), (2)En. Sec. 17, Ch. 338, L. 1969; amd. Sec. 1, Ch. 166, L. 1974; amd. Sec. 100, Ch. 350, L. 1974; Sec. 66-1026, R.C.M. 1947; (3)En. Sec. 18, Ch. 338, L. 1969; amd. Sec. 3, Ch. 168, L. 1971; amd. Sec. 101, Ch. 350, L. 1974; amd. Sec. 1, Ch. 213, L. 1977; Sec. 66-1027, R.C.M. 1947; R.C.M. 1947, 66-1026, 66-1027(3).

Cross-References

Licensing investigation and review — record access, 37-1-135.

37-3-308. Examination and application fees — further tax forbidden. (1) An applicant for a license to practice medicine to be issued on the basis of an examination by the board shall pay an examination fee as set by the board. The board shall set the fee, and it shall be reasonable and commensurate with the costs of the examination and related costs. Such examination fee shall be in addition to the application fee.

(2) All applicants, including applicants for a temporary license, shall pay an initial application fee as prescribed by the board.

(3) No license tax shall be imposed upon physicians by a municipality or any other subdivision of the state.

History: En. Sec. 22, Ch. 338, L. 1969; amd. Sec. 1, Ch. 167, L. 1974; R.C.M. 1947, 66-1031; amd. Sec. 2, Ch. 345, L. 1981.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-3-309. Application for license. (1) A person desiring a license to practice medicine shall make application to the department, verified by oath and in a form prescribed by the board. The application shall be accompanied by the license fee and documents, affidavits, and certificates necessary to establish that the applicant possesses the qualifications prescribed by this chapter apart from an examination required by the board. The burden of proof is on the applicant, but the board may make an independent investigation to determine whether the applicant possesses the qualifications and whether the applicant has committed unprofessional conduct. At the board's request, the applicant shall provide necessary authorizations for the release of records and information pertinent to the board's information.

(2) An applicant for a license on the basis of an examination shall file his application at least 60 days prior to the announced date of the examination. If the applicant is not at the time of filing his application a graduate of but is then in attendance at an approved medical school, he shall submit to the department, instead of a diploma or other required evidence of graduation, a written statement from the dean or other authorized representative of the approved medical school that the applicant will receive his diploma at the end of the then-current school term. The applicant may not be granted a certificate until he has filed with the department his diploma or other acceptable evidence of graduation from the approved medical school and has complied with the requirements of subsection (1) of this section, and no license may be issued to him until he has satisfied the board that he has completed at least 1 year of an approved internship or its equivalent and has otherwise met the requirements for the issuance of a license under this chapter.

History: En. Sec. 23, Ch. 338, L. 1969; amd. Sec. 103, Ch. 350, L. 1974; R.C.M. 1947, 66-1032; amd. Sec. 1, Ch. 348, L. 1983.

Cross-References

"Oath" defined, 1-1-201.

Proof of execution, Title 1, ch. 5, part 3.

Power of notary to take acknowledgments, 1-5-416.

Oaths, Title 1, ch. 6.

Affidavits, Title 26, ch. 1, part 10.

Standardized forms, 37-1-104.

Reporting disciplinary actions against licensees, 37-1-105.

Perjury, 45-7-201.

False swearing, 45-7-202.

37-3-310. Notice of change of address or name — applicants — licensees. When a person applies for a license of any type to practice medicine in this state, the person shall designate in his application his correct and official address to which the department shall send communications, notices, orders, citations, or other process, if any, affecting him. A person licensed to practice medicine in this state shall keep the department advised at all times of his correct mailing address and of his correct name. If the person changes his address or when the name of a licensee is changed by marriage or otherwise, the person shall within 30 days notify the department in writing of his old and new address or of the former name and new name. This information shall be entered promptly by the department in the official records of the department.

History: En. Sec. 39, Ch. 338, L. 1969; amd. Sec. 113, Ch. 350, L. 1974; R.C.M. 1947, 66-1048.

37-3-311. Examination. (1) Examinations for a license to practice medicine shall be held not less than twice each year, at a time and place specified by the board. The examination shall be conducted in the English language and shall be sufficiently comprehensive in medicine to adequately test the applicant's professional competence and ability. The examination shall be fair and impartial. Examination papers shall be identified by both the name of the applicant and a number assigned by the department. The board may require the department to use the examination prepared by the national board of medical examiners or the examination prepared by the federation licensing examination committee or successors.

(2) An applicant must meet the requirements of 37-3-305 prior to taking a scheduled examination.

(3) An applicant who is a graduate of a foreign medical school shall have passed an examination given by the education council for foreign medical graduates or its successor.

(4) The board may in its discretion require the department to give, subject to 37-1-101, an oral or practical examination to test the applicant's qualifications for licensure and grant appropriate credit for this.

(5) The board may use other Montana physicians to assist in preparing the examination.

(6) A person may not be granted a license to practice medicine if he fails to attain a passing grade as set by the board. If an applicant fails to meet the minimum grade requirements in his first examination, he may be reexamined not more than two additional times on each of the component parts of the examination. An examination fee shall be charged for each additional examination. If an applicant is prevented through no fault of his own from taking a scheduled examination, he may, within 2 years, be examined without submitting a new application.

History: En. Sec. 24, Ch. 338, L. 1969; amd. Sec. 2, Ch. 167, L. 1974; amd. Sec. 104, Ch. 350, L. 1974; R.C.M. 1947, 66-1033; amd. Sec. 2, Ch. 348, L. 1983; amd. Sec. 1, Ch. 405, L. 1985.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

37-3-312. Issuance of license. If the board determines that an applicant possesses the qualifications required by this chapter, the department shall issue a license to practice medicine, which shall be signed by the president or vice-president, attested by the secretary, and sealed with the seal of the board.

History: En. Sec. 25, Ch. 338, L. 1969; amd. Sec. 105, Ch. 350, L. 1974; R.C.M. 1947, 66-1034(part).

37-3-313. Annual registration fees — failure to pay — limiting authority to impose registration fees. (1) In addition to the license fees required of applicants, a licensed physician actively practicing medicine in this state shall pay each year to the department an annual registration fee as prescribed by the board. If a person licensed to practice medicine absents himself from the state for a period of 1 or more years or does not engage in active practice in this state, he may continue his license in good standing by payment each year of a fee prescribed by the board or, at the discretion of the board, he may be reinstated on the payment of a fee prescribed by the board for each year of absence or inactive practice.

(2) The annual payments for registration shall be made prior to April 1, and a receipt acknowledging payment of the annual registration fee shall be issued by the department. The department shall mail registration notices at least 60 days before the registration is due.

(3) In case of default in the payment of the annual registration fee by a person licensed to practice medicine who is actively practicing medicine in this state, his underlying certificate to practice medicine may be revoked by the board on 30 days' notice given to the delinquent of the time and place of considering the revocation. A registered or certified letter addressed to the last-known address of the person failing to comply with the requirements of

annual registration, as the address appears on the records of the department, constitutes sufficient notice of intention to revoke his underlying certificate. No certificate may be revoked for nonpayment if the person authorized to practice medicine, and notified, pays the annual registration fee before or at the time fixed for consideration of revocation, together with a delinquency penalty prescribed by the board. The department may collect the dues by an action at law.

(4) No registration or license fee may be imposed on a licensee under this chapter by a municipality or any other subdivision of the state.

History: En. Sec. 33, Ch. 338, L. 1969; amd. Sec. 110, Ch. 350, L. 1974; amd. Sec. 6, Ch. 533, L. 1977; R.C.M. 1947, 66-1042; amd. Sec. 3, Ch. 345, L. 1981.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Surcharge for pretrial review fund, 27-6-206.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-3-314. Deposit of money received. Money received under this chapter by the department shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6). In the case of a deficiency, the reserves in this account in the state special revenue fund may be used, on approval by the department of administration and the governor.

History: En. Sec. 34, Ch. 338, L. 1969; amd. Sec. 111, Ch. 350, L. 1974; R.C.M. 1947, 66-1043; amd. Sec. 1, Ch. 277, L. 1983.

37-3-315 through 37-3-320 reserved.

37-3-321. Refusal of license. If the board determines that an applicant for a license to practice medicine does not possess the qualifications or character required by this chapter or that he has committed unprofessional conduct, it shall refrain from authorizing the department to issue a license. The department shall mail to the applicant, at his last address of record with the department, written notification of the board's decision, together with notice of a time and place of a hearing before the board. If the applicant without cause fails to appear at the hearing or if after hearing the board determines he is not entitled to a license, the board shall refuse to grant the license.

History: En. Sec. 27, Ch. 338, L. 1969; amd. Sec. 106, Ch. 350, L. 1974; R.C.M. 1947, 66-1036.

Cross-References

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-3-322. Unprofessional conduct. As used in this chapter, "unprofessional conduct" means:

(1) resorting to fraud, misrepresentation, or deception in applying for or in securing a license or in taking the examination provided for in this chapter;

(2) performing abortion contrary to law;

(3) obtaining a fee or other compensation, either directly or indirectly, by the misrepresentation that a manifestly incurable disease, injury, or condition of a person can be cured;

(4) employing abusive billing practices;

(5) directly or indirectly giving or receiving a fee, commission, rebate, or other compensation for professional services not actually rendered. This prohibition does not preclude the legal functioning of lawful professional partnerships, corporations, or associations.

(6) willful disobedience of the rules of the board;

(7) conviction of an offense involving moral turpitude or conviction of a felony involving moral turpitude, and the judgment of the conviction, unless pending on appeal, is conclusive evidence of unprofessional conduct;

(8) commission of an act of sexual abuse, misconduct, or exploitation related to the licensee's practice of medicine;

(9) administering, dispensing, or prescribing a narcotic or hallucinatory drug, as defined by the federal food and drug administration or successors, otherwise than in the course of legitimate or reputable professional practice;

(10) conviction or violation of a federal or state law regulating the possession, distribution, or use of a narcotic or hallucinatory drug, as defined by the federal food and drug administration, and the judgment of conviction, unless pending on appeal, is conclusive evidence of unprofessional conduct;

(11) habitual intemperance or excessive use of narcotic drugs, alcohol, or any other drug or substance to the extent that the use impairs the user physically or mentally;

(12) conduct unbecoming a person licensed to practice medicine or detrimental to the best interests of the public as defined by rule of the board;

(13) conduct likely to deceive, defraud, or harm the public;

(14) making a false or misleading statement regarding the licensee's skill or the effectiveness or value of the medicine, treatment, or remedy prescribed by the licensee or at the licensee's direction in the treatment of a disease or other condition of the body or mind;

(15) resorting to fraud, misrepresentation, or deception in the examination or treatment of a person or in billing or reporting to a person, company, institution, or organization;

(16) use of a false, fraudulent, or deceptive statement in any document connected with the practice of medicine;

(17) practicing medicine under a false or assumed name;

(18) testifying in court on a contingency basis;

(19) conspiring to misrepresent or willfully misrepresenting medical conditions improperly to increase or decrease a settlement, award, verdict, or judgment;

(20) aiding or abetting in the practice of medicine by a person not licensed to practice medicine or a person whose license to practice medicine is suspended;

(21) allowing another person or organization to use the licensee's license to practice medicine;

(22) malpractice or negligent practice;

(23) practicing medicine as the partner, agent, or employee of or in joint venture with a person who does not hold a license to practice medicine within this state; however, this does not prohibit the incorporation of an individual licensee or group of licensees as a professional service corporation under Title 35, chapter 4, nor does it apply to a single consultation with or a single treatment by a person or persons licensed to practice medicine and surgery in another state or territory of the United States or foreign country;

(24) willfully or negligently violating the confidentiality between physician and patient, except as required by law;

(25) failing to report to the board any adverse judgment, settlement, or award arising from a medical liability claim related to acts or conduct similar to acts or conduct that would constitute grounds for action as defined in this section;

(26) failing to transfer pertinent and necessary medical records to another physician when requested to do so by the subject patient or by the patient's legally designated representative;

(27) failing to furnish to the board or its investigators or representatives information legally requested by the board;

(28) failing to cooperate with a lawful investigation conducted by the board;

(29) violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate parts 1 through 3 of this chapter or the rules authorized by them;

(30) having been subject to disciplinary action of another state or jurisdiction against a license or other authorization to practice medicine, based upon acts or conduct by the licensee similar to acts or conduct that would constitute grounds for action as defined in this section. A certified copy of the record of the action taken by the other state or jurisdiction is evidence of unprofessional conduct.

(31) any other act, whether specifically enumerated or not, which, in fact, constitutes unprofessional conduct.

History: En. Sec. 28, Ch. 338, L. 1969; amd. Sec. 107, Ch. 350, L. 1974; R.C.M. 1947, 66-1037; amd. Sec. 3, Ch. 22, L. 1979; amd. Sec. 1, Ch. 328, L. 1989.

Compiler's Comments

1989 Amendment: Expanded definition of unprofessional conduct for licensee in medical practice by inserting (4) concerning abusive billing practices, (5) concerning receiving fee for services not rendered, (8) concerning committing sexual abuse, misconduct, or exploitation, (13) concerning deceiving or harming public, (14) concerning making false or misleading statements on skill or effectiveness or value of medicine, treatment, or remedy, (16) concerning using false statement in medical document, (17) concerning practice of medicine under a false or assumed name, (21) concerning allowing use of medical license, (24) concerning violating patient confidentiality, (25) concerning failing to report adverse judgment or award, (26) concerning failing to transfer medical records upon request, (27) concerning failing to furnish Board information upon request, (28) concerning failing to cooperate with lawful investigation, and (30) concerning having been subject to discipline in another state or jurisdiction.

Cross-References

"Willfully" defined, 1-1-204.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Duties of director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Duty of Board to establish program for licensed physicians impaired by intemperance or narcotic drugs, 37-3-203.

Dangerous drugs, Title 45, ch. 9.

Montana Abortion Control Act, Title 50, ch. 20.

Controlled substances, Title 50, ch. 32.

37-3-323. Revocation or suspension of license — probation — fine — disposition of fine. (1) The board may make an investigation whenever it is brought to its attention that there is reason to suspect that a person having a license or certificate to practice medicine in this state:

(a) is mentally or physically unable to safely engage in the practice of medicine, has procured his license to practice medicine by fraud or misrepresentation or through mistake, has been declared incompetent by a court of competent jurisdiction and thereafter has not been lawfully declared competent, or has a condition which impairs his intellect or judgment to the extent that it incapacitates him for the safe performance of professional duties;

(b) has been guilty of unprofessional conduct;

(c) has practiced medicine while his license was suspended or revoked;

(d) has had his license suspended or revoked by any licensing authority for reasons other than nonpayment of fees; or

(e) while under probation has violated its terms.

(2) The investigation shall be for the purpose of determining the probability of the existence of these conditions or the commission of these offenses and may include requiring the person to submit to a physical examination or a mental examination, or both, by a physician or physicians selected by the board if it appears to be in the best interests of the public that this evaluation be secured. The board may examine and scrutinize the hospital records and reports of a licensee as part of the examination, and copies of these shall be released to the board on written request. If the board has reasonable cause to believe that this probability exists, the department shall mail to the person at his last address of record with the department a specification of the charges against him, together with a written notice of the time and place of the hearing on such charges, advising him that he may be present in person and by counsel if he so desires to offer evidence and be heard in his defense. The time fixed for the hearing may not be less than 30 days from the date of mailing the notice.

(3) A person, including a member of the board, may file a sworn complaint with the department against a person having a license to practice medicine in this state charging him with the commission of any of the offenses set forth in 37-3-322 or with any of the offenses or conditions set forth in subsection (1) of this section, which complaint shall set forth a specification of the charges. When the complaint is filed, the department shall mail a copy to the person accused at his last address of record with the department, together with a written citation of the time and place of the hearing on it.

(4) At the hearing the board shall adopt a resolution finding him guilty or not guilty of the matters charged. If the board finds that the offenses or conditions referred to in 37-3-322 or subsection (1) of this section do not exist with respect to the person or if he is found not guilty, the board shall dismiss the charges or complaint. If the board finds that the offenses or conditions referred to in 37-3-322 or in subsection (1) of this section do exist and the person is found guilty, the board shall:

(a) revoke his license;

(b) suspend his right to practice for a period not exceeding 1 year;

(c) suspend its judgment of revocation on the terms and conditions to be determined by the board;

(d) place him on probation;

(e) impose a fine, not to exceed $500 an incident; or

(f) take any other action in relation to disciplining him as the board in its discretion considers proper.

(5) In a case of revocation, suspension, or probation, the department shall enter in its records the facts of the action and of subsequent action of the board with respect to it.

(6) On the expiration of the term of suspension, the licensee shall be reinstated by the board if he furnishes the board with evidence that he is then of good moral character and conduct and restored to good health and that he has not practiced medicine in this state during the term of suspension. If the evidence fails to establish to the satisfaction of the board that the holder is then of good moral character and conduct or restored to good health or if the evidence shows he has practiced medicine in this state during the term of suspension, the board shall revoke the license at a hearing with notice and the procedure provided in subsection (1) of this section. The revocation is final and absolute.

(7) If a person holding a license to practice medicine under this chapter is by a final order or adjudication of a court of competent jurisdiction adjudged to be mentally incompetent or seriously mentally ill or addicted to the use of narcotics, his license may be suspended by the board. The suspension continues until the licensee is found or adjudged by the court to be restored to reason or cured or until he is discharged as restored to reason or cured and his professional competence has been proven to the satisfaction of the board.

(8) A fine imposed under this section must be deposited in the general fund.

(9) The remedies and method of enforcement of this part as provided for in this section are concurrent and in addition to the other remedies provided in this part.

History: **En. Sec. 29, Ch. 338, L. 1969; amd. Sec. 108, Ch. 350, L. 1974; amd. Sec. 1, Ch. 63, L. 1975; amd. Sec. 3, Ch. 101, L. 1977; R.C.M. 1947, 66-1038; amd. Sec. 1, Ch. 321, L. 1989.**

Compiler's Comments

1989 Amendment: Inserted (4)(e) authorizing Board to impose fine not exceeding $500 upon licensee guilty of offenses; inserted (8) requiring deposit of fine in general fund; and inserted (9) establishing that remedies and method of enforcement are concurrent and in addition to other remedies.

Cross-References

Contested cases, Title 2, ch. 4, part 6.

Judicial review of contested cases, Title 2, ch. 4, part 7.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

37-3-324. Reconsideration and review of actions of board. The board may, on its own motion or upon application at any time after refusal, suspension, or the revocation of a license or of probation or of other action as in this chapter provided, reconsider its prior action and grant, reinstate, or restore such license or terminate the suspension thereof or terminate probation or reduce the severity of its prior disciplinary action, provided that the taking of any such further action or the holding of a hearing with respect thereto shall rest in the sole discretion of the board.

History: **En. Sec. 30, Ch. 338, L. 1969; R.C.M. 1947, 66-1039.**

37-3-325. Violations — penalties. (1) A person practicing medicine in this state without complying with parts 1 through 3 of this chapter or an association or corporation (except a professional service corporation under Title 35, chapter 4) practicing medicine in this state or a person, association, or corporation violating parts 1 through 3 of this chapter or an officer or director of an association or corporation violating parts 1 through 3 of this chapter is guilty of a misdemeanor and on conviction shall be fined not less than $250 or more than $1,000 or imprisoned in the county jail for not less than 90 days or more than 1 year, or both. Each daily failure to comply with or each daily violation of parts 1 through 3 of this chapter constitutes a separate offense.

(2) A person presenting or attempting to file as his own the diploma, license, certificate, or credentials of another or who gives false or forged evidence to the board, a member of the board, or the department in connection with an application for a license to practice medicine or who practices medicine under a false or assumed name or who falsely impersonates another licensee is guilty of a felony and on conviction shall be imprisoned in the state penitentiary for a term of not less than 1 year or more than 10 years.

History: En. Sec. 32, Ch. 338, L. 1969; amd. Sec. 109, Ch. 350, L. 1974; R.C.M. 1947, 66-1041.

Cross-References

Rights of convicted, Art. II, sec. 28, Mont. Const.

Penalty for unlawful use of physician's assistant, 37-20-104.

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

Perjury and other falsification in official matters, Title 45, ch. 7, part 2.

37-3-326. Injunctive relief — manner of charging violation. Notwithstanding any other provision in this chapter, the board may maintain an action to enjoin a person from engaging in the practice of medicine until a license to practice medicine is procured. A person who has been enjoined and who violates the injunction is punishable for contempt of court. The injunction does not relieve the person practicing medicine without a license from a criminal prosecution. The remedy by injunction is in addition to remedies provided for the criminal prosecution of the offender. In charging a person in a complaint for injunction or in an affidavit, information, or indictment with a violation of this law by practicing medicine without a license, it is sufficient to charge that he did, on a certain day and in a certain county, engage in the practice of medicine not having a license to do so, without averring further or more particular facts concerning the violation.

History: En. Sec. 36, Ch. 338, L. 1969; amd. Sec. 112, Ch. 350, L. 1974; R.C.M. 1947, 66-1045.

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

Disciplinary authority of boards — injunctions, 37-1-136.

37-3-327. Subpoena — fees. Whenever the board in the transaction of any of its business or in the conduct of any hearing or whenever any person interested in such business or hearing desires to secure the presence for testimony of any person before the board, the board or such person may procure a subpoena from the clerk of district court of the county in which the business is to be transacted or the hearing held. The clerk of the district court shall issue the subpoena in the name of the state of Montana, commanding the person whose presence and testimony is desired to appear before the board at a certain time and place fixed by the board to testify in the manner of such business or in such hearing. The subpoena shall be served in the same manner as a subpoena for a trial in the district court and shall be substantially in the same form. Fees or other charges demanded by a person commanded to appear and testify shall be only those which may be demanded by witnesses in causes in the district court and under the same circumstances.

History: **En. Sec. 37, Ch. 338, L. 1969; R.C.M. 1947, 66-1046.**

Cross-References

Power of agencies to issue subpoenas, 2-4-104.

Power of hearing officer to issue subpoenas, 2-4-611.

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.

Arrest of witness for disobedience of subpoena, 26-2-106, 26-2-107.

37-3-328. Failure to appear or testify. Any person subpoenaed in the manner provided in 37-3-327 who fails or refuses to appear and testify shall be dealt with by the district court from which such subpoena was issued in the same manner and to the same effect as though the subpoena had commanded him to appear and testify in a cause on trial in said court.

History: **En. Sec. 38, Ch. 338, L. 1969; R.C.M. 1947, 66-1047.**

Cross-References

Contempts, Title 3, ch. 1, part 5.

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.

Part 4

Reporting Obligations

Part Cross-References

Montana Medical Legal Panel Act, Title 27, ch. 6.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Nonliability for peer review, Title 37, ch. 2, part 2.

37-3-401. Report of incompetence or unprofessional conduct. (1) Notwithstanding any provision of state law dealing with confidentiality, each licensed physician, professional standards review organization, and the Montana medical association or any component society thereof shall and any other person may report to the state board of medical examiners any information such physician, organization, association, society, or person has which appears to show that a physician is:

(a) medically incompetent;

(b) mentally or physically unable to safely engage in the practice of medicine; or

(c) guilty of unprofessional conduct.

(2) This section applies to professional standards review organizations only to the extent that such organizations are not prohibited from disclosing such information under federal law.

History: **En. 66-1053 by Sec. 1, Ch. 172, L. 1977; R.C.M. 1947, 66-1053.**

Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Duties of director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Unprofessional conduct, 37-3-322.

37-3-402. Insurer to report to board. Any insurer that issues or underwrites professional liability insurance in this state to any physician licensed to practice medicine shall report any claim against the insured for alleged professional negligence to the state board of medical examiners within 30 days after receiving notice of the claim from the insured or any other person. A final settlement or court decision resolving the claim in favor of the claimant shall also be reported to the board within 30 days of such settlement or decision. The report required by this section shall include the name of the insured, the name of the person making the claim, the reason or reasons for which the claim is made, and the basis of the settlement or court decision.

History: En. 66-1054 by Sec. 2, Ch. 172, L. 1977; R.C.M. 1947, 66-1054; amd. Sec. 4, Ch. 243, L. 1981.

Cross-References

Information required of professional liability insurers — submission, 33-23-311.

37-3-403. Report of prohibition or limitation on practice by hospital. Each hospital or health care facility which prohibits or limits the privilege of a physician to practice medicine within that facility shall report such action to the state board of medical examiners within 30 days after the action is taken if the action is based in whole or in part upon the commission of one or more of the offenses or the existence of one or more of the conditions set forth in 37-3-322 or 37-3-323(1). The report shall include the reason or reasons for the prohibition or limitation.

History: En. 66-1055 by Sec. 3, Ch. 172, L. 1977; R.C.M. 1947, 66-1055.

37-3-404. Immunity of person providing information. A person, organization, association, society, or health care facility which in good faith provides information to the state board of medical examiners as required by 37-3-401, 37-3-402, or 37-3-403 is not subject to suit for civil damages as a result thereof.

History: En. 66-1056 by Sec. 4, Ch. 172, L. 1977; R.C.M. 1947, 66-1056.

Cross-References

Nonliability for peer review, Title 37, ch. 2, part 2.

37-3-405. Suspension of license or privilege for failure to report. The willful failure of any person, organization, association, society, or health care facility to comply with 37-3-401, 37-3-402, or 37-3-403 is grounds for suspension of any license or privilege granted by the state of Montana. Upon such failure, the agency granting the license or privilege may, in its discretion, suspend the license or privilege for a period not to exceed 1 month.

History: En. 66-1057 by Sec. 5, Ch. 172, L. 1977; R.C.M. 1947, 66-1057.

Cross-References

Suspension of license subject to contested case procedure, 2-4-631.

CHAPTER 4

DENTISTRY AND DENTAL HYGIENE

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37-4-511. Limitations on the administration of general anesthetics and practices involving general anesthesia.
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37-4-515. Hospital admissions — patient histories and examinations.

Chapter Cross-References

Professional service corporations, Title 35, ch. 4.

General provisions relating to health care practitioners, Title 37, ch. 2.

Denturitry, Title 37, ch. 29.

Validity of consent to medical treatment, Title 41, ch. 1, part 4.

Dentist to report child abuse, 41-3-201.

Part 1

General

Part Cross-References

Limitations on dentistry and oral surgery practices involving general anesthesia, 37-4-511.

Duty of dentist to report violation of Montana Elder Abuse Prevention Act, 53-5-511.

37-4-101. Definitions — practice of dentistry. (1) Unless the context requires otherwise, in this chapter the following definitions apply:

(a) "Board" means the board of dentistry provided for in 2-15-1842.

(b) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(c) "Conscious sedation" means a minimally depressed level of consciousness in which the patient breathes normally without assistance, retains protective reflexes, and responds to physical stimulation or verbal command in a manner appropriate to the patient's cognitive level. Conscious sedation is not a form of general anesthesia, and brief interludes of unconsciousness during conscious sedation do not bring conscious sedation within the scope of general anesthesia.

(d) "General anesthesia" means a state of unconsciousness intentionally produced by anesthetic agents, with absence of pain sensation over the entire body and a greater or lesser degree of muscular relaxation. The drugs producing this state can be administered by inhalation, intravenously, intramuscularly, or via the gastrointestinal tract. General anesthesia is divided into:

(i) full general anesthesia, which means a level of consciousness in which the patient is without intact protective reflexes, is unable to maintain an airway, and is incapable of rational response to query or command; and

(ii) light general anesthesia, which means a level of consciousness in which the patient breathes normally without assistance and retains protective reflexes throughout most of the procedure.

(e) "General anesthetic" means any recognized anesthetic agent, sedative, hypnotic, tranquilizer, or narcotic used in sufficient prescribed dosages for the purpose of inducing general anesthesia. The term general anesthetic does not include a nitrous oxide/oxygen mixture or any other anesthetic administered to produce conscious sedation.

(2) A person is "practicing dentistry" under this chapter if he:

(a) performs, attempts, advertises to perform, causes to be performed by the patient or any other person, or instructs in the performance of dental operations, oral surgery, or dental service of any kind gratuitously or for a salary, fee, money, or other remuneration paid or to be paid, directly or indirectly, to himself, any other person, or agency;

(b) is a manager, proprietor, operator, or conductor of a place where dental operations, oral surgery, or dental services are performed;

(c) directly or indirectly, by any means or method, furnishes, supplies, constructs, reproduces, or repairs a prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth;

(d) places the appliance or structure in the human mouth or attempts to adjust it;

(e) advertises to the public, by any method, to furnish, supply, construct, reproduce, or repair a prosthetic denture, bridge, appliance, or other structure to be worn in the human mouth;

(f) diagnoses, professes to diagnose, prescribes for, professes to prescribe for, treats, or professes to treat disease, pain, deformity, deficiency, injury, or physical condition of human teeth, jaws, or adjacent structures;

(g) extracts or attempts to extract human teeth or corrects, attempts, or professes to correct malpositions of teeth or of the jaw;

(h) gives or professes to give interpretations or readings of dental roentgenograms;

(i) administers an anesthetic of any nature, subject to the limitations provided in 37-4-511, in connection with a dental operation;

(j) uses the words "dentist", "dental surgeon", "oral surgeon", the letters "D.D.S.", "D.M.D.", or any other words, letters, title, or descriptive matter which in any way represents him as being able to diagnose, treat, prescribe, or operate for any disease, pain, deformity, deficiency, injury, or physical condition of human teeth, jaws, or adjacent structures;

(k) states, advertises, or permits to be stated or advertised, by sign, card, circular, handbill, newspaper, radio, or otherwise, that he can perform or will attempt to perform dental operations or render a diagnosis in connection therewith; or

(l) engages in any of the practices included in the curricula of recognized dental colleges.

History: (1)En. 66-901.1 by Sec. 77, Ch. 350, L. 1974; Sec. 66-901.1, R.C.M. 1947; (2)En. Sec. 10, Ch. 48, L. 1935; re-en. Sec. 3115.10, R.C.M. 1935; amd. Sec. 2, Ch. 38, L. 1941; amd. Sec. 3, Ch. 34, L. 1961; amd. Sec. 5, Ch. 352, L. 1969; amd. Sec. 83, Ch. 350, L. 1974; Sec. 66-910, R.C.M. 1947; R.C.M. 1947, 66-901.1, 66-910(1); amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 4, Ch. 363, L. 1981; amd. Sec. 1, Ch. 518, L. 1985.

Cross-References

Exemptions from physician's licensing requirements, 37-3-103.

37-4-102. Designations constituting prima facie evidence of practicing dentistry. Whenever any person shall append the word "dentist" or the letters "D.D.S.", "D.M.D.", or like letters to his or her name in any way for advertising or upon any door or sign or upon or in any writing or print, publish, or use the same in any way or cause either of the same to be done, the same shall be prima facie evidence that such person is engaged in the practice of dentistry and subject to the regulations, convictions, and penalties of this chapter.

History: En. Sec. 12, Ch. 48, L. 1935; re-en. Sec. 3115.12, R.C.M. 1935; R.C.M. 1947, 66-912.

37-4-103. Exemptions. (1) A dental laboratory or dental technician is not practicing dentistry under this chapter when engaged in the construction, making, alteration, or repairing of bridges, crowns, dentures, or other prosthetic appliances, surgical appliances, or orthodontic appliances if the casts, models, or impressions on which the work is constructed have been made by a regularly licensed and practicing dentist and the crowns, bridges, dentures, prosthetic appliances, surgical appliances, or orthodontic appliances are returned to the dentist on whose order the work was constructed.

(2) Section 37-4-101(2) and part 5 of this chapter do not apply to a legally qualified physician or surgeon or to a dental surgeon of the United States army, navy, public health service, or veterans' bureau or to a legal practitioner of another state making a clinical demonstration before a dental society, convention, or association of dentists or to a licensed dental hygienist performing an act authorized under 37-4-401 or 37-4-405.

(3) Nothing in this chapter prevents a bona fide faculty member of a school, college, or department of a university recognized and approved by the board from performing dental procedures necessary to his teaching functions.

Nothing in this chapter prevents students from performing dental procedures under the supervision of a bona fide instructor of a school, college, or department of a university recognized and approved by the board provided such dental procedures are a part of the assigned teaching curriculum.

(4) This chapter does not prohibit or require a license with respect to the practice of denturitry under the conditions and limitations defined by Title 37, chapter 29. None of the regulations contained in this chapter apply to a person engaged in the lawful practice of denturitry.

History: En. Sec. 10, Ch. 48, L. 1935; re-en. Sec. 3115.10, R.C.M. 1935; amd. Sec. 2, Ch. 38, L. 1941; amd. Sec. 3, Ch. 34, L. 1961; amd. Sec. 5, Ch. 352, L. 1969; amd. Sec. 83, Ch. 350, L. 1974; R.C.M. 1947, 66-910(2), (4); amd. Sec. 1, Ch. 337, L. 1979; amd. Sec. 24, I.M. No. 97, approved Nov. 6, 1984.

Part 2

Board of Dentistry

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1842.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-4-201. Official seal — organization — subpoena power. Said board shall have an official seal of its own design and shall employ the same to authenticate its acts and records as may be required. The board shall, at its annual meeting, choose from its members a president, vice-president, and secretary-treasurer, who shall serve at the pleasure of the board. Any member of the board shall have the power to administer oaths and affirmations and said board shall have the power to hear testimony and subpoena witnesses as to all matters relating to the duties imposed upon it by law.

History: En. Sec. 3, Ch. 48, L. 1935; re-en. Sec. 3115.3, R.C.M. 1935; R.C.M. 1947, 66-903.

Cross-References

Oath defined, 1-1-201.

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

Oaths, Title 1, ch. 6.

Power of agencies to issue subpoenas, 2-4-104.

Power of hearing officer to issue subpoenas, 2-4-611.

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.

Arrest of witness for disobedience of subpoena, 26-2-106, 26-2-107.

37-4-202. Meetings — notice — quorum — records. (1) The board shall meet at least once each year in this state at the call of the president and secretary-treasurer. Five days' notice must be given by the department to board members of the time and place of the meeting of the board.

(2) Meetings held for the purpose of examining candidates for a license to practice dentistry in this state may not exceed 6 days.

(3) Five members of the board constitute a quorum for the transaction of business. Its proceedings are open to public inspection in cases of public interest.

(4) Money collected by the department under this chapter shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

(5) The department shall keep a complete record of meetings and proceedings of the board and shall keep a complete account of moneys received and disbursements made by the department.

History: (1), (3) thru (5)En. Sec. 4, Ch. 48, L. 1935; re-en. Sec. 3115.4, R.C.M. 1935; amd. Sec. 147, Ch. 147, L. 1963; amd. Sec. 25, Ch. 177, L. 1965; amd. Sec. 21, Ch. 93, L. 1969; amd. Sec. 1, Ch. 352, L. 1969; amd. Sec. 78, Ch. 350, L. 1974; Sec. 66-904, R.C.M. 1947; (2)En. Sec. 9, Ch. 48, L. 1935; re-en. Sec. 3115.9, R.C.M. 1935; amd. Sec. 149, Ch. 147, L. 1963; amd. Sec. 4, Ch. 352, L. 1969; amd. Sec. 82, Ch. 350, L. 1974; amd. Sec. 29, Ch. 439, L. 1975; amd. Sec. 2, Ch. 531, L. 1977; Sec. 66-909, R.C.M. 1947; R.C.M. 1947, 66-904, 66-909(2); amd. Sec. 2, Ch. 316, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 524, L. 1987.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Public records, Title 2, ch. 6.

Preservation of records, Title 22, ch. 3, part 2.

Duty of Department to keep records, 37-1-101.

Duty of Department to provide facilities, 37-1-101.

Licensing investigation and review — records access, 37-1-135.

Disrupting meeting as disorderly conduct, 45-8-101.

37-4-203. Compensation and expenses of board members — disbursement of excess funds. (1) Out of the funds derived from fees collected under this chapter, each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

(2) Money collected in excess of expenses and salaries provided for shall be held by the department as a special fund for meeting the expenses of the board, the proper administration of this chapter, and educational purposes considered wise by the board.

History: En. Sec. 9, Ch. 48, L. 1935; re-en. Sec. 3115.9, R.C.M. 1935; amd. Sec. 149, Ch. 147, L. 1963; amd. Sec. 4, Ch. 352, L. 1969; amd. Sec. 82, Ch. 350, L. 1974; amd. Sec. 29, Ch. 439, L. 1975; amd. Sec. 2, Ch. 531, L. 1977; R.C.M. 1947, 66-909(1), (3); amd. Sec. 5, Ch. 363, L. 1981; amd. Sec. 8, Ch. 474, L. 1981.

37-4-204. Affiliation with national association authorized — delegates. The board may affiliate with the national association as an active member, pay regular annual dues to the association, and send delegates to the meetings of the association.

History: En. Sec. 20, Ch. 48, L. 1935; re-en. Sec. 3115.20, R.C.M. 1935; amd. Sec. 8, Ch. 352, L. 1969; amd. Sec. 87, Ch. 350, L. 1974; R.C.M. 1947, 66-920; amd. Sec. 6, Ch. 363, L. 1981; amd. Sec. 9, Ch. 474, L. 1981; amd. Sec. 1, Ch. 349, L. 1983.

37-4-205. Rulemaking. The board may adopt, amend, or repeal rules necessary for the implementation, continuation, and enforcement of this chapter in accordance with the Montana Administrative Procedure Act. Rules adopted under this section may include but are not limited to the following subjects:

(1) the practice of dentistry or oral surgery involving the administration of anesthetics; and

(2) advertising by a licensed dentist including:

(a) the use of false, deceptive, or misleading advertising;

(b) the use of information concerning fees, areas of practice, specialization, personal background, and quality of service in advertising; and

(c) the use of warnings and disclaimers in advertising.

History: En. Sec. 2, Ch. 349, L. 1983; amd. Sec. 3, Ch. 518, L. 1985.

Cross-References

Administrative Procedure Act, Title 2, ch. 4.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-4-301. Examination — qualifications — fees — certification. (1) Applicants for licensure shall take and pass an examination in order to be licensed. The examination shall consist of a written part and a practical or clinical part. It may also include, at the board's discretion, an oral interview with the board which may include questions pertaining to the practice of dentistry. The board may accept, in satisfaction of the written part, successful completion of an examination by the national board of dental examiners and, whenever the board determines necessary, successful completion of a board examination in jurisprudence to be administered at times and places approved by the board. The board may accept, in satisfaction of the practical part, successful completion of an examination by a board-designated regional testing service.

(2) Acceptance by the board of such written and practical examination shall be conditioned on evidence that the examination is sufficiently thorough to test the fitness of the applicant to practice dentistry. It shall include, written in the English language, questions on anatomy, histology, physiology, chemistry, pharmacology and therapeutics, metallurgy, pathology, bacteriology, anesthesia, operative and surgical dentistry, prosthetic dentistry, prophylaxis, orthodontics, periodontics and endodontics, and any additional subjects pertaining to dental service.

(3) The board has the right to administer its own examination in lieu of acceptance of the national board written examination and a regional testing service practical examination. The board is authorized to make rules governing any such examination procedures.

(4) Applicants for licensure shall submit an application, which shall include, when required:

(a) certification of successful completion of the national board written examination;

(b) certification of successful completion of a regional board practical examination;

(c) three affidavits of good moral character;

(d) certificate of graduation from a board-approved dental school;

(e) an examination fee commensurate with costs and set by the board;

(f) a licensure fee commensurate with costs and set by the board;

(g) a recent photograph of the applicant; and

(h) copies of all other state licenses that are held by the applicant.

(5) Applications must be submitted no less than 20 days prior to the board interview and jurisprudence examination.

(6) Applicants may not take the jurisprudence examination or the oral interview without first having completed and passed all other parts of the examination.

(7) Examination results will be accepted for a period of time as set by board rule. An applicant failing to pass his first examination, if otherwise qualified, may take a subsequent examination upon payment of a fee commensurate with costs and set by the board.

(8) The board is authorized to adopt necessary and reasonable rules governing application procedures.

History: En. Sec. 5, Ch. 48, L. 1935; re-en. Sec. 3115.5, R.C.M. 1935; amd. Sec. 1, Ch. 38, L. 1941; amd. Sec. 1, Ch. 34, L. 1961; amd. Sec. 2, Ch. 352, L. 1969; amd. Sec. 1, Ch. 287, L. 1971; amd. Sec. 79, Ch. 350, L. 1974; R.C.M. 1947, 66-905; amd. Sec. 2, Ch. 337, L. 1979; amd. Sec. 3, Ch. 349, L. 1983; amd. Sec. 1, Ch. 62, L. 1987.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-4-302. Recognition of dental schools. In determining what shall constitute a recognized dental college or school and/or a recognized school of dental hygiene, the board shall be guided by the standards, canons, and practices required for such recognition by the council on dental education of the American dental association.

History: En. Sec. 24, Ch. 48, L. 1935; re-en. Sec. 3115.24, R.C.M. 1935; amd. Sec. 13, Ch. 352, L. 1969; R.C.M. 1947, 66-924.

37-4-303. Replacing lost certificate. The department shall, on proof satisfactory to the board of the loss of a certificate issued under this chapter, issue a duplicate certificate, and a fee as prescribed by the board shall be charged for issuing the certificate.

History: En. Sec. 6, Ch. 48, L. 1935; re-en. Sec. 3115.6, R.C.M. 1935; amd. Sec. 2, Ch. 34, L. 1961; amd. Sec. 148, Ch. 147, L. 1963; amd. Sec. 3, Ch. 352, L. 1969; amd. Sec. 80, Ch. 350, L. 1974; R.C.M. 1947, 66-906(1); amd. Sec. 1, Ch. 66, L. 1981; amd. Sec. 4, Ch. 345, L. 1981.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-4-304. Repealed. Sec. 4, Ch. 66, L. 1981.

History: En. Sec. 7, Ch. 48, L. 1935; re-en. Sec. 3115.7, R.C.M. 1935; R.C.M. 1947, 66-907.

37-4-305. Repealed. Sec. 4, Ch. 66, L. 1981.

History: En. Sec. 8, Ch. 48, L. 1935; re-en. Sec. 3115.8, R.C.M. 1935; amd. Sec. 81, Ch. 350, L. 1974; R.C.M. 1947, 66-908.

37-4-306. Admission of dentists from other states — reciprocity. (1) A dentist who has been lawfully licensed to practice in another state or territory which has and maintains a standard for the practice of dentistry or dental surgery which in the opinion of the board is equal to that at the time maintained in this state, is a graduate of an accredited 4-year high school or has actual scholastic credits equivalent to a 4-year high school course, is a graduate of a recognized dental school or college, has been lawfully and continuously engaged in the practice of dentistry for 5 years or more immediately before filing his application to practice in this state, and deposits in person with the department an attested certificate from the examining board of the state or territory in which he is registered or licensed, certifying to the fact of his registration and license and of his being a person of good moral character and of professional attainments, may, on the payment of a fee as prescribed by the board, and after satisfactory practical examination demonstrating his proficiency, be granted a license to practice dentistry in this state without being required to take an examination in theory.

(2) However, no license may be issued to an applicant without an examination in theory unless the state or territory from which the certificate has been granted to the applicant extends a like privilege to engage in the practice of dentistry to dentists licensed by this state who move to the other state. The board may enter into reciprocal relations with similar boards of other states whose laws are practically identical with this chapter.

History: En. Sec. 6, Ch. 48, L. 1935; re-en. Sec. 3115.6, R.C.M. 1935; amd. Sec. 2, Ch. 34, L. 1961; amd. Sec. 148, Ch. 147, L. 1963; amd. Sec. 3, Ch. 352, L. 1969; amd. Sec. 80, Ch. 350, L. 1974; R.C.M. 1947, 66-906(2); amd. Sec. 5, Ch. 345, L. 1981.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-4-307. Annual renewal fee — default — active, inactive status — continuing education — local fees prohibited. (1) Every licensed dentist shall pay each year a renewal fee to the board. The renewal fee must be set by the board commensurate with costs. Notice of the change in the amount of renewal fees must be given to each dentist registered in this state by the department.

(2) Payment of the annual renewal fee must be made prior to March 1 of each year, and a license renewal must be issued by the department. A reasonable late fee is required if the annual renewal fee is not paid before March 1.

(3) The board may adopt rules governing requirements for demonstrating continued competency for license renewal.

(4) (a) The board may reclassify an active status license to inactive status for a licensee who furnishes satisfactory evidence that the licensee has discontinued the actual practice of dentistry because of physical disability or retirement.

(b) An individual who wishes to maintain a Montana license but does not maintain a resident practice must be licensed in the inactive status.

(c) Application to convert an inactive status license to an active status license must be made in accordance with rules of the board. The application to convert to active status must accompany the submission of the renewal fee prescribed for such license. If more than 1 year has passed since the license was inactivated, satisfactory evidence of competence must be submitted to the board before an active status license may be issued.

(5) (a) In case of default in payment of the annual renewal fee by a licensee, his license must be revoked by the board. The board shall give the licensee 30 days' notice of its proposed revocation action. The notice must be sent by certified letter addressed to the last-known address of the licensee and must contain a statement of the time and place of the meeting at which the revocation will be considered.

(b) If the licensee pays the renewal fee, plus a reasonable late fee set by the board, prior to the time set for revocation, the license may not be revoked.

(c) A license revoked for nonpayment of the renewal fee may be reinstated within 5 years of revocation if:

(i) renewal fees are paid for each year they were unpaid, plus a late penalty fee for each year;

(ii) the applicant produces evidence, satisfactory to the board, of good standing with the dentistry regulatory agencies of any jurisdiction in which the applicant has engaged in the active practice of dentistry since the last payment of a renewal fee under this chapter; and

(iii) the applicant produces evidence, satisfactory to the board, of good character and competence.

(6) Every dentist shall give the board notice of any change in name, address, or status within 30 days of the change.

(7) No unit of local government, including those exercising self-government powers, may impose a license fee on a dentist licensed under this chapter.

History: **En. Sec. 6, Ch. 48, L. 1935; re-en. Sec. 3115.6, R.C.M. 1935; amd. Sec. 2, Ch. 34, L. 1961; amd. Sec. 148, Ch. 147, L. 1963; amd. Sec. 3, Ch. 352, L. 1969; amd. Sec. 80, Ch. 350, L. 1974; R.C.M. 1947, 66-906(3) thru (6); amd. Sec. 3, Ch. 337, L. 1979; amd. Sec. 6, Ch. 345, L. 1981; amd. Sec. 7, Ch. 363, L. 1981; amd. Sec. 4, Ch. 349, L. 1983.**

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-4-308 through 37-4-320 reserved.

37-4-321. Grounds for disciplinary proceedings — range of sanctions — recovery of costs. (1) The board may censure, prescribe probation, suspend, or revoke any license issued under this chapter or fine the licensee not to exceed $5,000 per incident for any of the following causes:

(a) physical or mental incompetence;

(b) malpractice;

(c) unprofessional conduct, as defined by rule of the board; or

(d) violation of any of the provisions of this chapter or rules or orders of the board.

(2) The board may, following a final determination resulting in any disciplinary action taken by the board under subsection (1), recover from the disciplined party all reasonable costs of any proceeding incurred for the purposes of that disciplinary action. Fines and costs recovered must be deposited in the board's special revenue account.

History: **En. Sec. 13, Ch. 48, L. 1935; re-en. Sec. 3115.13, R.C.M. 1935; amd. Sec. 6, Ch. 352, L. 1969; amd. Sec. 85, Ch. 350, L. 1974; R.C.M. 1947, 66-913(1), (2); amd. Sec. 1, Ch. 493, L. 1979; amd. Sec. 8, Ch. 363, L. 1981; amd. Sec. 2, Ch. 62, L. 1987; amd. Sec. 44, Ch. 83, L. 1989.**

Compiler's Comments

1989 Amendment: At end of (2) substituted "special revenue account" for "earmarked revenue account".

Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Duties of director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Disciplinary authority of boards — injunctions, 37-1-136.

37-4-322. When publishing professional cards not unprofessional conduct. (1) It shall not be considered unprofessional for a dentist to place in any newspaper or publication, subject to the limitations stated hereafter, a card bearing his name only, together with his degree or the word "dentist" and giving office location, hours, and telephone numbers. If he limits his practice to a specialty he may so announce it or he may announce his absence from or his return to practice in the same manner.

(2) A dentist may publish a list of his fees, but such listing must include full and complete information stating if the published fee is minimum, maximum, or usual and whether or not any additional charges may be made for the services published. All announcements or publications must be done in a professional manner that will in no way coerce or confuse the public.

History: **En. Sec. 17, Ch. 48, L. 1935; re-en. Sec. 3115.17, R.C.M. 1935; amd. Sec. 5, Ch. 34, L. 1961; amd. Sec. 7, Ch. 352, L. 1969; R.C.M. 1947, 66-917; amd. Sec. 2, Ch. 493, L. 1979.**

Cross-References

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-4-323. Procedure for investigation — sanctions. (1) Upon receipt of a complaint or upon its own motion the board shall determine whether the matters alleged warrant investigation and may cause investigation to be made. If the board finds preliminary cause for imposing the sanctions listed in 37-4-321, it may do so in accordance with the provisions of the Montana Administrative Procedure Act. If the board finds that the evidence obtained does not justify the imposition of sanctions, it must so notify the licensee concerned and the complaining party and take no further action.

(2) If the board finds that the evidence obtained does not warrant suspension or revocation of a license but does warrant other sanctions, it may either:

(a) issue a public or private decree of censure; or

(b) impose a probation with terms and conditions appropriately adapted under the circumstances of the particular case.

(3) The licensee is entitled to an opportunity for a contested case hearing before a sanction of censure or probation becomes effective to the same extent an opportunity for hearing is afforded prior to suspension or revocation.

(4) In addition to its authority to impose sanctions, the board may deny an application for a license for any of the following reasons:

(a) failure to meet the relevant requirements of Title 37, chapter 4;

(b) making any untrue or fraudulent statement in support of the application; or

(c) any of the grounds set forth in 37-4-321 for suspension or revocation of a license.

History: **En. Sec. 13, Ch. 48, L. 1935; re-en. Sec. 3115.13, R.C.M. 1935; amd. Sec. 6, Ch. 352, L. 1969; amd. Sec. 85, Ch. 350, L. 1974; R.C.M. 1947, 66-913(3) thru (6); amd. Sec. 3, Ch. 493, L. 1979.**

Cross-References

Contested case procedure, Title 2, ch. 4, part 6.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensee, 37-1-105.

Duties of director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

37-4-324. Board may procure court order to compel attendance of witnesses — contempt. (1) The district court in and for the county in which any inquiry, investigation, hearing, or proceeding may be held by the board or any member thereof shall have the power to compel the attendance of witnesses, the giving of testimony, and the production of papers, books, accounts, and documents as required by any subpoena issued by the board or any member thereof.

(2) In case of the refusal of any witness to attend or testify or produce any papers required by such subpoena, the board or any member thereof before whom the testimony is to be given or produced may report to the district court in and for the county in which the proceeding is pending, by petition, setting forth that due notice has been given of the time and place fixed for the attendance of said witness or the production of said papers and that the witness has been summoned in the manner prescribed in this chapter and that the witness has failed and refused to attend or produce the papers required by the subpoena before the board or any member thereof in the case or proceeding named in the notice and subpoena or has refused to answer questions propounded to him in the course of such proceedings and ask an order of said court compelling the witness to attend and testify or produce said papers before the board. The court, upon the petition of the board or any member of the board, shall enter an order directing the witness to appear before the court at the time and place to be fixed by the court in such order, not more than 10 days from the date of the order, and then and there show cause why he has not attended or testified or produced such papers before the board. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the board or a member thereof and regularly served, the court shall thereupon enter an order that said witness appear at the time and place fixed in said order and testify or produce the required papers, and upon failure to obey said order, said witness shall be dealt with as for contempt of court.

History: **En. Sec. 16, Ch. 48, L. 1935; re-en. Sec. 3115.16, R.C.M. 1935; R.C.M. 1947, 66-916.**

Cross-References

Power of agencies to issue subpoenas, 2-4-104.

Power of hearing officer to issue subpoenas, 2-4-611.

Contempts, Title 3, ch. 1, part 5.

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.

Arrest of witness for disobedience of subpoena, 26-2-106, 26-2-107.

37-4-325. Witness fees and mileage. (1) Each witness who shall appear by order of the board or any member thereof shall be entitled to receive, if demanded, for his attendance the same fees and mileage allowed by law to a witness in civil cases in the district court, which amount shall be paid by the party at whose request such witness is subpoenaed unless otherwise ordered by the board. When any witness who has not been required to attend at the request of any party is subpoenaed by the board, his fees and mileage may be paid from the funds of the board in the same manner as other expenses of the board are paid.

(2) Any witness subpoenaed, except one whose fees and mileage may be paid from the funds of the board, may at the time of service demand the fee

to which he is entitled for travel to and from the place at which he is required to appear and 1 day's attendance. If such witness demands such fees at the time of service and they are not at that time paid or tendered, he shall not be required to attend before the board or a member thereof or referee as directed in the subpoena.

History: **En. Sec. 15, Ch. 48, L. 1935; re-en. Sec. 3115.15, R.C.M. 1935; R.C.M. 1947, 66-915.**

Cross-References

Mileage allowed witnesses, 2-18-503, 2-18-504.

Witness fees, Title 26, ch. 2, part 5.

37-4-326. Acts constituting misdemeanors. Any person, company, or association shall be guilty of a misdemeanor and upon conviction thereof shall be punishable with a fine of not less than $50 or more than $200 or by imprisonment for not more than 6 months in the county jail or by both such fine and imprisonment who shall:

(1) sell or barter or offer to sell or barter any diploma or document conferring or purporting to confer any dental degree or any certificate or transcript made or purporting to be made pursuant to the laws regulating the license and regulation of dentists;

(2) purchase or procure by barter any such diploma, certificate, or transcript with intent that the same shall be used as evidence of the holder's qualification to practice dentistry or in fraud of the laws regulating such practice;

(3) with fraudulent intent, alter in a material regard any such diploma, certificate, or transcript;

(4) use or attempt to use any such diploma, certificate, or transcript which has been purchased, fraudulently issued, counterfeited, or materially altered, either as a license or color of license to practice dentistry or in order to procure registration as a dentist;

(5) practice dentistry under a false or assumed name;

(6) in an affidavit required of an applicant for examination, license, or registration under this chapter, willfully make a false statement in a material regard;

(7) engage in the practice of dentistry under any title or name without causing to be displayed in a conspicuous manner and in a conspicuous place in his or her office the required annual registration certificate for the current year; or

(8) within 10 days after demand made by the secretary of the board, fail to furnish to said board the names and addresses of all persons practicing or assisting in the practice of dentistry in the office of said person, company, or association at any time within 60 days prior to said notice, together with a sworn statement showing under and by what license or authority said person, company, or association and said employee are and have been practicing dentistry, but said affidavit shall not be used as evidence against said person, company, or association in any proceeding under this section.

History: **En. Sec. 18, Ch. 48, L. 1935; re-en. Sec. 3115.18, R.C.M. 1935; R.C.M. 1947, 66-918.**

Cross-References

"Willfully" defined, 1-1-204.

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

37-4-327. Practicing dentistry without certificate — penalty. (1) A person who, as principal, agent, employer, employee, or assistant, practices dentistry or who does an act of dentistry without having first secured a certificate to practice dentistry from the department entitling him to practice in this state is guilty of a misdemeanor and on conviction in a district court may be fined not less than $500 or more than $1,000 or be confined for a period not exceeding 6 months in the county jail.

(2) Fines imposed and collected under this chapter, except those paid to a justice's court, shall be paid into the treasury of the county in which the suits, actions, or proceedings are commenced. Money paid into the treasury over and above the amount necessary to reimburse the county for expense incurred by the county in a suit, action, or proceeding brought under this chapter shall be deposited before January 1 of each year in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 19, Ch. 48, L. 1935; re-en. Sec. 3115.19, R.C.M. 1935; amd. Sec. 3, Ch. 38, L. 1941; amd. Sec. 150, Ch. 147, L. 1963; amd. Sec. 86, Ch. 350, L. 1974; R.C.M. 1947, 66-919; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 22, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

37-4-328. Duty of county attorney — jurisdiction of justices' courts — injunction. (1) The county attorney of the county in which an offense is alleged to have occurred shall attend to the prosecution of complaints made under this chapter, both on trial in the justice's court where the complaint is made and also on hearing in the district court, either on the complaint or on information or indictment filed against a person under this chapter in the district court. This chapter does not prevent the prosecution of a person for violation of this chapter on the information of the county attorney directly.

(2) Justice's courts have original concurrent jurisdiction of misdemeanors committed under this chapter.

(3) If a person, firm, or corporation engages in the practice of dentistry without possessing a valid license or violates this chapter, the attorney general, a county attorney, or the board may maintain an action in the name of this state to enjoin the person, firm, or corporation from engaging in the practice of dentistry or otherwise violating this chapter. The injunction does not relieve criminal prosecution, but the remedy by injunction is in addition to the liability of the offender to criminal prosecution.

History: En. Sec. 11, Ch. 48, L. 1935; re-en. Sec. 3115.11, R.C.M. 1935; amd. Sec. 4, Ch. 34, L. 1961; amd. Sec. 84, Ch. 350, L. 1974; R.C.M. 1947, 66-911.

Cross-References

Duties of Attorney General, 2-15-501.

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Criminal jurisdiction of Justices' Courts, 3-10-303.

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

Disciplinary authority of boards — injunctions, 37-1-136.

Part 4

Dental Hygienists and Auxiliary Personnel

37-4-401. Practice of dental hygiene. The practice of dental hygiene is services, performed by a licensed preventive oral health practitioner known as a dental hygienist, that are educational, therapeutic, prophylactic, or preventive procedures in nature, as the board in writing defines and authorizes. These services include and the board shall authorize the administration of local anesthetic agents by a licensed dental hygienist certified by the board to administer the agents under the direct supervision and authorization of a licensed dentist. However, this section does not allow the board or a licensed dentist to delegate any of the following duties:

(1) diagnosis, treatment planning, and prescription;

(2) surgical procedures on hard and soft tissues other than root planing and subgingival curettage;

(3) restorative, prosthetic, orthodontic, and other procedures which require the knowledge and skill of a dentist;

(4) prescription for drugs or medications or work authorizations.

History: En. Sec. 21, Ch. 48, L. 1935; re-en. Sec. 3115.21, R.C.M. 1935; amd. Sec. 9, Ch. 352, L. 1969; amd. Sec. 88, Ch. 350, L. 1974; R.C.M. 1947, 66-921(part); amd. Sec. 5, Ch. 349, L. 1983; amd. Sec. 1, Ch. 449, L. 1985.

Cross-References

Practice of healing arts not practice of medicine, 37-3-103(1)(n).

Limitations on the administration of general anesthetics, 37-4-511.

37-4-402. License — examination. (1) The department may issue licenses for the practice of dental hygiene to qualified applicants to be known as dental hygienists.

(2) Except as provided in 37-4-404, no person may engage in the practice of dental hygiene or practice as a dental hygienist in this state until he has passed an examination approved by the board under rules it considers proper and has been issued a license by the department.

(3) Applicants for licensure shall take and pass an examination in order to be licensed. The examination shall consist of a written part and a practical or clinical part. The board may accept, in satisfaction of the written part, successful completion of an examination by the national board of dental examiners and, whenever the board determines necessary, successful completion of a board examination in jurisprudence. The board may accept, in satisfaction of the practical part, successful completion of an examination by a board-designated regional testing service.

(4) The board has the right to administer its own examination in lieu of acceptance of the national board written examination and a regional testing service practical examination. The board is authorized to make rules governing any such examination procedures.

(5) Applicants for licensure shall submit an application, which shall include, when required:

(a) certification of successful completion of the national board written examination;

(b) certification of successful completion of a regional board practical examination;

(c) two affidavits of good moral character;

(d) certificate of graduation from a board-approved dental hygiene school;

(e) an examination fee commensurate with costs and set by the board;

(f) a licensure fee commensurate with costs and set by the board;

(g) a recent photograph of the applicant; and

(h) copies of all other state licenses that are held by the applicant.

(6) Applications must be submitted no less than 20 days prior to the jurisprudence examination. Applicants may not take the jurisprudence examination without first having completed and passed all other parts of the examination.

(7) Examination results will be accepted for a period of time as set by board rule. An applicant failing to pass his first examination, if otherwise qualified, may take a subsequent examination on payment of a fee commensurate with costs and set by the board.

(8) The board is authorized to adopt necessary and reasonable rules governing application procedures.

History: En. Secs. 21, 23, Ch. 48, L. 1935; re-en. Secs. 3115.21, 3115.23, R.C.M. 1935; amd. Secs. 9, 11, Ch. 352, L. 1969; amd. Secs. 88, 90, Ch. 350, L. 1974; R.C.M. 1947, 66-921(part), 66-923(3); amd. Sec. 4, Ch. 337, L. 1979; amd. Sec. 6, Ch. 349, L. 1983; amd. Sec. 2, Ch. 449, L. 1985.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Duty of Department to administer and grade examinations, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

37-4-403. Issuance of certificate — fee. An applicant who successfully passes the examination prescribed by the board shall, on the payment of a fee prescribed by the board, be granted a license as a dental hygienist and shall be registered in a record kept by the department and shall receive a certificate, signed by the members of the board, in a form prescribed by the board.

History: En. Sec. 21, Ch. 48, L. 1935; re-en. Sec. 3115.21, R.C.M. 1935; amd. Sec. 9, Ch. 352, L. 1969; amd. Sec. 88, Ch. 350, L. 1974; R.C.M. 1947, 66-921(5); amd. Sec. 7, Ch. 345, L. 1981.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-4-404. Admission of dental hygienists from other states — reciprocity. (1) On the payment of a fee prescribed by the board and after satisfactory practical examination demonstrating his proficiency, a dental hygienist may be granted a license to practice dental hygiene in this state without being required to take an examination in theory if he:

(a) has been lawfully licensed to practice in another state or territory which has and maintains a standard for the practice of dental hygiene which, in the opinion of the board, is equal to that at the time maintained in this state;

(b) has been lawfully and continuously engaged in the practice of dental hygiene for a period of 1 year or more immediately before filing his application to practice in this state; and

(c) deposits in person with the department an attested certificate from the examining board of the state or territory in which he is registered or licensed, certifying to the fact of his registration and license and of his being a person of good moral character and of professional attainments.

(2) No license may be issued to the applicant without an examination in theory unless the state or territory from which the certificate has been granted extends a like privilege to engage in the practice of dental hygiene to dental hygienists licensed by this state who have moved to the other state.

(3) The board may enter into reciprocity agreements with other states or territories, the standards of which as to the practice of dental hygiene are, in the opinion of the board, equal to those of this state.

History: **En. Sec. 23, Ch. 48, L. 1935; re-en. Sec. 3115.23, R.C.M. 1935; amd. Sec. 11, Ch. 352, L. 1969; amd. Sec. 90, Ch. 350, L. 1974; R.C.M. 1947, 66-923(1), (2), (4); amd. Sec. 8, Ch. 345, L. 1981; amd. Sec. 7, Ch. 349, L. 1983.**

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-4-405. Dental hygienist to practice under supervision of licensed dentist. (1) A licensed dental hygienist may practice in the office of a licensed and actively practicing dentist, in a public or private institution, under a board of health, or in a public clinic authorized by the board but may not practice except under the direct personal supervision of a licensed dentist; however, the dental hygienist may give instruction in oral hygiene without the supervision of a licensed dentist in a public or private institution or hospital or extended care facility or under a board of health or in a public clinic authorized by the board.

(2) The board may, in lieu of the direct supervision requirement set forth in subsection (1), permit a licensed dental hygienist to provide clinical dental hygiene services to a public or private institution, a hospital or extended care facility, or a school or public health program after a review of a request for such service and a description of the type of supervision necessary is made by the board. For the purposes of this section "supervision" is defined as follows:

(a) "direct supervision" means the supervision of those tasks and procedures that do not require the dentist in the room where performed but require his presence on the premises and availability for prompt consultation and treatment; and

(b) "general supervision" means those tasks and procedures that do not require the presence of a dentist on the premises but shall remain under the dentist's directive order, control, responsibility, and evaluation.

(3) Notwithstanding any other provisions of this section, a dental hygienist may continue performing tasks and procedures requiring direct supervision if:

(a) the supervising dentist required to be on the premises has been called out of the office briefly for an emergency; and

(b) both the hygienist and the patient consent.

History: **En. Sec. 21, Ch. 48, L. 1935; re-en. Sec. 3115.21, R.C.M. 1935; amd. Sec. 9, Ch. 352, L. 1969; amd. Sec. 88, Ch. 350, L. 1974; R.C.M. 1947, 66-921(6); amd. Sec. 4, Ch. 493, L. 1979; amd. Sec. 9, Ch. 363, L. 1981.**

37-4-406. Annual renewal fee — default — active, inactive status — continuing education — revocation of license — local fees prohibited. (1) Every licensed dental hygienist shall pay each year a renewal fee to the board. The renewal fee must be set by the board commensurate with costs. The renewal must be for either active or inactive status, as defined by rules of the board.

(2) Payment of the annual renewal fee must be made prior to March 1 of each year, and a license renewal must be issued by the department. A reasonable late fee is required if the annual renewal fee is not paid before March 1.

(3) The board may adopt rules governing requirements for demonstrating continued competency for license renewal.

(4) (a) The board may reclassify an active status license to inactive status for a licensee who furnishes satisfactory evidence that the licensee has discontinued the actual practice of dental hygiene because of physical disability or retirement.

(b) An individual who wishes to maintain a Montana license but does not maintain a resident practice must be licensed in the inactive status.

(c) Application to convert an inactive status license to an active status license must be made in accordance with rules of the board. The application to convert to active status must accompany the submission of the renewal fee prescribed for such license. If more than 1 year has passed since the license was inactivated, satisfactory evidence of competence must be submitted to the board before an active status license may be issued.

(5) In case of default in payment of the renewal fee by any licensee, the board must revoke the license.

(a) The board shall give the licensee 30 days' notice of its proposed revocation action. The notice must be sent by certified mail to the last-known address of the licensee and must contain a statement of the time and place of the meeting at which the revocation will be considered.

(b) The payment of the renewal fee on or before the time set for revocation, with a reasonable late fee set by the board, excuses the default.

(c) A license revoked for nonpayment of the renewal fee may be reinstated within 5 years of revocation if:

(i) renewal fees are paid for each year they were unpaid, plus a late penalty for each year;

(ii) the applicant produces evidence, satisfactory to the board, of good standing with the dental hygiene regulatory agencies of any jurisdiction in which the applicant has engaged in the active practice of dental hygiene since the last payment of a renewal fee under this chapter; and

(iii) the applicant produces evidence, satisfactory to the board, of good character and competence.

(6) Every dental hygienist shall give the board notice of any change in name, address, or status within 30 days of the change.

(7) The board may, after a hearing, revoke or suspend the license of a dental hygienist for violating this chapter.

(8) No unit of local government, including those exercising self-government powers, may impose a license fee on a dental hygienist licensed under this chapter.

History: En. Sec. 22, Ch. 48, L. 1935; re-en. Sec. 3115.22, R.C.M. 1935; amd. Sec. 10, Ch. 352, L. 1969; amd. Sec. 89, Ch. 350, L. 1974; R.C.M. 1947, 66-922; amd. Sec. 5, Ch. 337, L. 1979; amd. Sec. 9, Ch. 345, L. 1981; amd. Sec. 8, Ch. 349, L. 1983.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-4-407. Provisions not to apply to licensed dentist, physician, or surgeon. Nothing in this chapter relating to the practice of dental hygiene applies to its practice by a licensed dentist or a licensed physician and surgeon in this state.

History: En. Sec. 23, Ch. 48, L. 1935; re-en. Sec. 3115.23, R.C.M. 1935; amd. Sec. 11, Ch. 352, L. 1969; amd. Sec. 90, Ch. 350, L. 1974; R.C.M. 1947, 66-923(5).

Cross-References

Exemptions from physician's licensing requirements, 37-3-103.

37-4-408. Auxiliary personnel — employment, duties, and limitations. The board may, within the limitations of this chapter, adopt rules which define the qualifications and outline the tasks of any unlicensed auxiliary personnel to be employed by any licensed dentist in his office, except that nothing herein shall be construed to allow the board by rule to provide for delegation by a licensed dentist to any such auxiliary personnel any of the duties prohibited to dental hygienists under 37-4-401 or a prophylaxis. The performance of intraoral tasks by all dental auxiliaries, as permitted by board rules, shall be under the direct supervision of the licensed dentist employing such personnel.

History: En. Sec. 66-923.1 by Sec. 12, Ch. 352, L. 1969; R.C.M. 1947, 66-923.1; amd. Sec. 9, Ch. 349, L. 1983.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 5

Regulatory Provisions

Part Cross-References

Montana Unfair Trade Practices and Consumer Protection Act of 1973, Title 30, ch. 14, part 1.

37-4-501. Work order for construction or repair of appliances. (1) A licensed dentist who employs or engages the services of a person, firm, or corporation to construct, reproduce, make, alter, or repair bridges, crowns, dentures, other prosthetic appliances, surgical appliances, or orthodontic appliances shall furnish the person, firm, or corporation with a written work authorization on forms prescribed by the board which shall contain:

(a) the name and address of the person, firm, or corporation to which the work authorization is directed;

(b) the patient's name or identification number, but if only a number is used the patient's name shall be written on the duplicate copy of the work authorization retained by the dentist;

(c) the date on which the work authorization was written;

(d) a description of the work to be done, including diagrams if necessary;

(e) a specification of the type and quality of the materials to be used; and

(f) the signature of the dentist and the number of his license to practice dentistry.

(2) The person, firm, or corporation receiving a work authorization from a licensed dentist shall retain the original work authorization and the dentist shall retain the duplicate copy for inspection at a reasonable time by the board for a period of 2 years from date of issuance.

History: En. Sec. 10, Ch. 48, L. 1935; re-en. Sec. 3115.10, R.C.M. 1935; amd. Sec. 2, Ch. 38, L. 1941; amd. Sec. 3, Ch. 34, L. 1961; amd. Sec. 5, Ch. 352, L. 1969; amd. Sec. 83, Ch. 350, L. 1974; R.C.M. 1947, 66-910(3).

37-4-502. Restrictions on advertising and solicitation. No person, firm, or corporation engaged in the business of constructing, altering, or repairing bridges, crowns, dentures, other prosthetic appliances, surgical appliances, or orthodontic appliances may advertise the services, technique, or materials to the general public by means of advertisements in public newspapers, magazines, or by radio, television, display advertisements, or by any other means except advertisements in professional or trade papers, trade journals, trade directories, trade periodicals, trade magazines, and listings in business and telephone directories limited to name, address, and telephone number, which may not occupy more than the number of lines necessary to disclose the information; nor may a person, firm, or corporation so engaged in any way directly solicit the patronage of the general public.

History: En. Sec. 10, Ch. 48, L. 1935; re-en. Sec. 3115.10, R.C.M. 1935; amd. Sec. 2, Ch. 38, L. 1941; amd. Sec. 3, Ch. 34, L. 1961; amd. Sec. 5, Ch. 352, L. 1969; amd. Sec. 83, Ch. 350, L. 1974; R.C.M. 1947, 66-910(5).

37-4-503. Identification of dentures. All nonmetal full dentures shall be permanently identified with the first and last name of the owner at the time of processing the dentures.

History: En. Sec. 5, Ch. 493, L. 1979.

37-4-504 through 37-4-510 reserved.

37-4-511. Limitations on the administration of general anesthetics and practices involving general anesthesia. (1) No person engaged in the practice of dentistry or oral surgery may perform any dental or surgical procedure upon another person if a general anesthetic is administered unless such anesthetic is administered and monitored by:

(a) an anesthesiologist licensed to practice medicine by the state board of medical examiners;

(b) a nurse anesthetist recognized in that specialty by the state board of nursing; or

(c) another health professional who has received at least 1 year of postgraduate training in the administration of general anesthesia.

(2) No person engaged in the practice of dentistry or oral surgery may conduct any dental or surgical procedure upon another person under full general anesthesia unless the vital signs of the patient are continually monitored by another health professional who meets the qualifications for an anesthesiologist, nurse anesthetist, or other trained health professional as provided for in subsection (1).

(3) No person engaged in the practice of dentistry or oral surgery may conduct any dental or surgical procedure upon another person under light

general anesthesia unless the vital signs of the patient are continually monitored by another person who has been examined by the board or its agent in life support skills and demonstrated a satisfactory level of proficiency as established by the board.

(4) No person engaged in the practice of dentistry or oral surgery may administer a general anesthetic to any other person unless he satisfies the requirements for a person qualified to administer a general anesthetic, as provided in subsection (1), and meets any additional standards established by the board of dentistry for training in the administration of general anesthesia and in the treatment of the complications thereof. This subsection does not affect the requirements for monitoring of vital signs by another health professional under subsection (2) or (3).

(5) The facility in which general anesthesia is to be administered as part of a dental or surgical procedure must be equipped with proper drugs and equipment to safely administer anesthetic agents, to monitor the well-being of the patient under general anesthesia, and to treat the complications that may arise from general anesthesia.

History: **En. Sec. 2, Ch. 518, L. 1985.**

37-4-512 through 37-4-514 reserved.

37-4-515. Hospital admissions — patient histories and examinations. (1) For purposes of this section, "oral surgeon" means a dentist who has successfully completed a postgraduate program in oral surgery accredited by a nationally recognized accreditation body approved by the United States office of education.

(2) A qualified oral surgeon who is a member of the medical staff of a hospital and who admits a patient to the hospital for oral or maxillofacial surgery may take the history and perform a physical examination of the patient if the patient has no known medical problems.

(3) This section does not affect hospital staff privileges of any hospital and may not be construed to require that any specific privilege, including taking a history or performing a physical examination, be extended or not extended to any oral surgeon.

History: **En. Sec. 1, Ch. 313, L. 1987.**

CHAPTER 5

OSTEOPATHY

Part 1 — General

37-5-101. Definitions — practice of osteopathy.
37-5-102. Osteopathy not practice of medicine.

Part 2 — Board of Osteopathic Physicians
(Repealed. Sec. 6, Ch. 87, L. 1981)

Part 3 — Licensing

37-5-301. Qualifications for licensure — application — reexamination.

37-5-302. Examination — examination fee.
37-5-303. Reciprocity.
37-5-304. Temporary certificates.
37-5-305. Limitations on certificate — prescribing drugs — surgery.
37-5-306. Repealed.
37-5-307. Renewal fee.
37-5-308 through 37-5-310 reserved.
37-5-311. Revocation of certificate.
37-5-312. Penalty for practicing osteopathy without a license.

Chapter Cross-References

Doctor-patient privilege, 26-1-805.

Professional service corporations, Title 35, ch. 4.

General provisions relating to health care practitioners, Title 37, ch. 2.

Validity of consent to medical treatment, Title 41, ch. 1, part 4.

Osteopaths to report child abuse, 41-3-201.

Health care information, Title 50, ch. 16.

Part 1

General

37-5-101. Definitions — practice of osteopathy. (1) Unless the context requires otherwise, in this chapter the following definitions apply:

(a) "Board" means the board of medical examiners provided for in 2-15-1841.

(b) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(2) Every person is "practicing osteopathy" within the meaning of this chapter who:

(a) appends to or uses in connection with his or her name the words "doctor of osteopathy, diplomate of osteopathy, osteopath, osteopathist, osteopathic practitioner, osteopathic physician", or words of like import or any abbreviation thereof or the letters "D.O."; or

(b) professes publicly to or who, either on his own behalf, in his own name or in his trade name, or in behalf of any other person, corporation, association, partnership (as manager, bookkeeper, practitioner, or agent), treats, cures, alleviates, or relieves any ailment or disease of either mind or body or cures or relieves any fracture or misplacement or abnormal condition or bodily injury or deformity by any treatment or manipulation or method of manipulating a human body or any of its limbs, muscles, or parts by the use of the hands or mechanical appliances in an effort or attempt to relieve any pressure, obstruction, misplacement, or defect in any bone, muscle, ligament, nerve, vessel, organ, or part of the body, after having received or with the intent or expectation of receiving therefor, either directly or indirectly, any bonus, gift, or compensation whatsoever; provided, however, that nothing in this section restrains or restricts any legally licensed physician or surgeon in the practice of his profession.

History: (1)En. 66-1401.1 by Sec. 141, Ch. 350, L. 1974; Sec. 66-1401.1, R.C.M. 1947; (2)En. Sec. 12, Ch. 51, L. 1905; amd. Sec. 2, Ch. 112, L. 1907; re-en. Sec. 1605, Rev. C. 1907; re-en. Sec. 3136, R.C.M. 1921; re-en. Sec. 3136, R.C.M. 1935; Sec. 66-1412, R.C.M. 1947; R.C.M. 1947, 66-1401.1, 66-1412; amd. Sec. 4, Ch. 22, L. 1979; amd. Sec. 1, Ch. 87, L. 1981.

Cross-References

Chiropractic not practice of osteopathy, 37-12-102.

37-5-102. Osteopathy not practice of medicine. The system, method, or science of treating diseases of the human body commonly known as osteopathy is not the practice of medicine or surgery within the meaning of chapter 3, parts 1 through 3, and is not subject to the provisions of those parts.

History: En. Sec. 11, p. 51, L. 1901; rep. and re-en. Sec. 13, Ch. 51, L. 1905; re-en. Sec. 1606, Rev. C. 1907; re-en. Sec. 3137, R.C.M. 1921; re-en. Sec. 3137, R.C.M. 1935; amd. Sec. 7, Ch. 101, L. 1977; R.C.M. 1947, 66-1413; amd. Sec. 5, Ch. 22, L. 1979.

Cross-References

Exemptions from physician's licensing requirements, 37-3-103.

Part 2

Board of Osteopathic Physicians (Repealed. Sec. 6, Ch. 87, L. 1981)

Part Compiler's Comments

Histories of Repealed Sections:

37-5-201. En. Sec. 2, p. 48, L. 1901; rep. and re-en. Sec. 2, Ch. 51, L. 1905; re-en. Sec. 1595, Rev. C. 1907; re-en. Sec. 3126, R.C.M. 1921; re-en. Sec. 3126, R.C.M. 1935; amd. Sec. 142, Ch. 350, L. 1974; R.C.M. 1947, 66-1402.

37-5-202. En. Sec. 10, p. 51, L. 1901; rep. and re-en. Sec. 10, Ch. 51, L. 1905; re-en. Sec. 1603, Rev. C. 1907; re-en. Sec. 3134, R.C.M. 1921; re-en. Sec. 3134, R.C.M. 1935; amd. Sec. 146, Ch. 147, L. 1963; amd. Sec. 2, Ch. 206, L. 1967; amd. Sec. 24, Ch. 93, L. 1969; amd. Sec. 146, Ch. 350, L. 1974; amd. Sec. 33, Ch. 439, L. 1975; R.C.M. 1947, 66-1410; amd. Sec. 10, Ch. 474, L. 1981.

Part Cross-References

Board of Medical Examiners, Title 37, ch. 3, part 2.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Licensing of doctors of osteopathy, 37-3-306.

Nondiscrimination in licensing, 49-3-204.

37-5-301. Qualifications for licensure — application — reexamination. (1) It is unlawful for a person to practice osteopathy in this state without a license from the department. An applicant applying for licensure shall be a person of good moral character. An applicant shall present evidence to the board that he has completed the following educational and professional requirements:

(a) 4 years of high school or its scholastic equivalent;

(b) at least 2 years' preprofessional college education in an accredited college or university; and

(c) 4 years' professional education in an osteopathic college conforming to the minimum educational standards for osteopathic colleges established by the American osteopathic association and which is approved by the board.

(2) Application shall be made on forms prescribed by the board and furnished by the department.

(3) An applicant who fails the examination is entitled to a second examination without charge.

History: En. Sec. 3, p. 49, L. 1901; rep. and re-en. Sec. 3, Ch. 51, L. 1905; re-en. Sec. 1956, Rev. C. 1907; amd. Sec. 1, Ch. 124, L. 1919; re-en. Sec. 3127, R.C.M. 1921; amd. Sec. 1, Ch. 79, L. 1925; re-en. Sec. 3127, R.C.M. 1935; amd. Sec. 1, Ch. 108, L. 1953; amd. Sec. 1, Ch. 206, L. 1967; amd. Sec. 143, Ch. 350, L. 1974; R.C.M. 1947, 66-1403(1).

Cross-References

Standardized forms, 37-1-104.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-5-302. Examination — examination fee. (1) A person commencing the practice of osteopathy in this state, in any of its branches, shall apply to the department for a license to do so, and the applicant, at the time and place designated by the board, shall submit to an examination in the following subjects: anatomy, physiology, chemistry, pathology, bacteriology, gynecology, obstetrics, and theory and practice of osteopathy and other subjects taught in well-regulated and recognized schools of osteopathy and considered advisable by the board and shall present evidence of having actually attended, as required in 37-5-301, a legally authorized and regularly conducted school of osteopathy recognized by the board.

(2) Examination papers on subjects peculiar to osteopathy shall be graded by the department, subject to 37-1-101. The examination shall be scientific and practical, but of sufficient severity to test the candidate's fitness to practice osteopathy.

(3) After examination the department shall issue a license to practice osteopathy in this state to applicants who pass the examination, which license shall be granted by not less than two members of the board, attested by the board's seal.

(4) The fee for the examination and license shall be prescribed by the board.

History: En. Sec. 5, p. 49, L. 1901; rep. and re-en. Sec. 5, Ch. 51, L. 1905; re-en. Sec. 1598, Rev. C. 1907; re-en. Sec. 3129, R.C.M. 1921; re-en. Sec. 3129, R.C.M. 1935; amd. Sec. 2, Ch. 108, L. 1953; amd. Sec. 145, Ch. 147, L. 1963; amd. Sec. 145, Ch. 350, L. 1974; R.C.M. 1947, 66-1405; amd. Sec. 2, Ch. 87, L. 1981; amd. Sec. 10, Ch. 345, L. 1981.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-5-303. Reciprocity. A graduate of a reputable school of osteopathy who has been strictly examined and licensed to practice osteopathy in another state may be licensed to practice osteopathy in this state on production to the board of his diploma and the license obtained in the other state and satisfactory evidence of good moral character, and the payment of fees required of other applicants; but the board may have the applicant examined as to his qualifications.

History: En. Sec. 11, Ch. 51, L. 1905; re-en. Sec. 1604, Rev. C. 1907; re-en. Sec. 3135, R.C.M. 1921; re-en. Sec. 3135, R.C.M. 1935; amd. Sec. 147, Ch. 350, L. 1974; R.C.M. 1947, 66-1411.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-5-304. Temporary certificates. The secretary of the board may authorize the department, upon examination, to issue a certificate to an applicant to practice osteopathy until the next meeting of the board when he shall report the facts, at which time the temporary certificate expires, but the temporary certificate may not be issued after the board has once rejected the applicant.

History: En. Sec. 4, p. 49, L. 1901; rep. and re-en. Sec. 4, Ch. 51, L. 1905; re-en. Sec. 1597, Rev. C. 1907; re-en. Sec. 3128, R.C.M. 1921; re-en. Sec. 3128, R.C.M. 1935; amd. Sec. 144, Ch. 350, L. 1974; R.C.M. 1947, 66-1404.

37-5-305. Limitations on certificate — prescribing drugs — surgery. The certificates provided for in this chapter do not authorize the holders thereof to prescribe or use drugs in the practice of osteopathy or to perform major or operative surgery. A person holding a certificate under this chapter who prescribes or uses drugs in the practice of osteopathy or who performs major or operative surgery is guilty of a misdemeanor, provided that nothing in this chapter may be construed to prohibit any legalized osteopath in this state from practicing major or operative surgery after having passed a satisfactory examination in surgery before the Montana board of medical examiners.

History: En. Sec. 6, p. 50, L. 1901; rep. and re-en. Sec. 6, Ch. 51, L. 1905; re-en. Sec. 1599, Rev. C. 1907; re-en. Sec. 3130, R.C.M. 1921; re-en. Sec. 3130, R.C.M. 1935; amd. Sec. 6, Ch. 101, L. 1977; R.C.M. 1947, 66-1406.

Cross-References

Licensing of physicians, Title 37, ch. 3, part 3.

Penalty when no penalty specified, 46-18-212.

37-5-306. Repealed. Sec. 4, Ch. 66, L. 1981.

History: En. Sec. 7, p. 50, L. 1901; rep. and re-en. Sec. 7, Ch. 51, L. 1905; re-en. Sec. 1600, Rev. C. 1907; re-en. Sec. 3131, R.C.M. 1921; re-en. Sec. 3131, R.C.M. 1935; R.C.M. 1947, 66-1407.

37-5-307. Renewal fee. (1) A person holding a certificate to practice under this chapter and who is in active practice in this state shall before April 1 of each year pay a renewal fee prescribed by the board to the department, and a person holding a certificate to practice under this chapter who is not in active practice shall before April 1 of each year pay a renewal fee prescribed by the board to the department. The department shall before March 15 of each year send a notice to each person holding a valid certificate to practice under this chapter and from whom a fee is due stating that the fee is due.

(2) The certificate to practice under this chapter automatically becomes void when the renewal fee is not paid at the time named. However, the board may reinstate a practitioner whose certificate has lapsed on payment of back renewal fees or on payment of a maximum fee prescribed by the board if the lapsed fees exceed the maximum fee.

History: En. Sec. 3, p. 49, L. 1901; rep. and re-en. Sec. 3, Ch. 51, L. 1905; re-en. Sec. 1956, Rev. C. 1907; amd. Sec. 1, Ch. 124, L. 1919; re-en. Sec. 3127, R.C.M. 1921; amd. Sec. 1, Ch. 79, L. 1925; re-en. Sec. 3127, R.C.M. 1935; amd. Sec. 1, Ch. 108, L. 1953; amd. Sec. 1, Ch. 206, L. 1967; amd. Sec. 143, Ch. 350, L. 1974; R.C.M. 1947, 66-1403(2), (3); amd. Sec. 11, Ch. 345, L. 1981.

Cross-References

Suspension of licensing fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-5-308 through 37-5-310 reserved.

37-5-311. Revocation of certificate. Any such certificate may be revoked by said board upon satisfactory proof of fraud or misrepresentation in procuring the same or for any violation of the provisions of this chapter or any gross immorality by the holder of such certificate.

History: En. Sec. 9, p. 51, L. 1901; rep. and re-en. Sec. 9, Ch. 51, L. 1905; re-en. Sec. 1602, Rev. C. 1907; re-en. Sec. 3133, R.C.M. 1921; re-en. Sec. 3133, R.C.M. 1935; R.C.M. 1947, 66-1409.

Cross-References

Contested case procedure applicable to license revocation, 2-4-102.

Reporting disciplinary actions against licensees, 37-1-105.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-5-312. Penalty for practicing osteopathy without a license. Any person practicing osteopathy in this state without first obtaining a license herein provided for or contrary to the provisions of this chapter or who, for the purpose of obtaining such license, shall falsely represent himself or herself to be the holder of a diploma as herein provided shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $1,000 or less than $250 or by imprisonment in the county jail not exceeding 1 year or less than 90 days or by both fine and imprisonment for each and every such offense. It shall be the duty of the respective county attorneys to prosecute violations of this chapter.

History: En. Sec. 8, p. 51, L. 1901; rep. and re-en. Sec. 8, Ch. 51, L. 1905; amd. Sec. 1, Ch. 112, L. 1907; re-en. Sec. 1601, Rev. C. 1907; re-en. Sec. 3132, R.C.M. 1921; re-en. Sec. 3132, R.C.M. 1935; R.C.M. 1947, 66-1408.

Cross-References

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

CHAPTER 6

PODIATRY

Part 1 — General

37-6-101. Definitions.
37-6-102. Scope of practice.
37-6-103. Application of chapter.
37-6-104. Construction of chapter.
37-6-105. Administration of drugs.

Part 2 — Board of Podiatry Examiners

37-6-201. Repealed.

Part 3 — Licensing

37-6-301. License required for practice.
37-6-302. Qualifications for licensure — exemptions from examination — temporary licenses.
37-6-303. Examination — subjects — fees — reexamination.
37-6-304. Designations on license — recording — renewal — display.
37-6-305. Deposit of moneys collected.

37-6-306 through 37-6-309 reserved.
37-6-310. Unprofessional conduct.
37-6-311. Refusal or revocation of license — investigation — reinstatement.
37-6-312. Penalty.

Chapter Cross-References

Professional service corporations, Title 35, ch. 4.

General provisions relating to health care practitioners, Title 37, ch. 2.

Podiatrists to report child abuse, 41-3-201.

Health care information, Title 50, ch. 16.

Part 1

General

Part Cross-References

Duty of podiatrist to report violation of Montana Elder Abuse Prevention Act, 53-5-511.

37-6-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Podiatry" means the diagnosis and treatment of ailments of the human functional foot as provided in 37-6-102.

(2) "Podiatrist" means a physician or surgeon of the foot, licensed to diagnose and treat ailments of the human functional foot.

(3) "Board" means the board of medical examiners provided for in 2-15-1841.

(4) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

History: En. Sec. 1, Ch. 2, L. 1923; re-en. Sec. 3154.1, R.C.M. 1935; amd. Sec. 1, Ch. 218, L. 1939; amd. Sec. 55, Ch. 350, L. 1974; R.C.M. 1947, 66-601; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 2, Ch. 470, L. 1981; amd. Sec. 1, Ch. 288, L. 1987; amd. Sec. 1, Ch. 484, L. 1989.

Compiler's Comments

1989 Amendment: Substituted definition of podiatry for former definition that read: "the diagnosis, medical, surgical, mechanical, manipulative, and electrical treatment of ailments of the human foot"; and in definition of podiatrist inserted "diagnose and" and "human functional".

37-6-102. Scope of practice. (1) A podiatrist may diagnose and treat ailments of the human functional foot by all systems and means. The functional foot is the anatomical foot and any muscle, tendon, ligament, or other soft tissue structure that is directly attached to the anatomical foot and that impacts on or affects the foot or foot function.

(2) A podiatrist may not administer any anesthetic other than a local anesthetic.

History: En. Sec. 2, Ch. 2, L. 1923; re-en. Sec. 3154.2, R.C.M. 1935; amd. Sec. 2, Ch. 218, L. 1939; amd. Sec. 56, Ch. 350, L. 1974; R.C.M. 1947, 66-602(part); amd. Sec. 2, Ch. 288, L. 1987; amd. Sec. 2, Ch. 484, L. 1989.

Compiler's Comments

1989 Amendment: In (1), in first sentence, substituted "A podiatrist may diagnose and treat ailments of the human functional foot by all systems and means" for "A podiatrist may treat ailments of the human foot or toe but may not amputate the human foot or toe or" and inserted second sentence describing functional foot; and made minor changes in form and phraseology.

37-6-103. Application of chapter. This chapter shall not apply to any physician licensed to practice his profession in this state or to surgeons of the

United States army, navy, and/or public health service when in actual performance of their duties.

History: En. Sec. 10, Ch. 2, L. 1923; re-en. Sec. 3154.10, R.C.M. 1935; amd. Sec. 7, Ch. 218, L. 1939; R.C.M. 1947, 66-610.

Cross-References

Exemptions from physician's licensing requirements, 37-3-103.

37-6-104. Construction of chapter. Nothing in this chapter shall be construed as prohibiting the fitting, recommending, advertising, adjusting, or sale of corrective shoes, arch supports, or similar mechanical appliances, or foot remedies by retail dealers or manufacturers.

History: En. Sec. 8, Ch. 218, L. 1939; R.C.M. 1947, 66-611.

37-6-105. Administration of drugs. A licensed podiatrist may administer and prescribe drugs in accordance with 37-2-101 as a "medical practitioner".

History: En. Sec. 3, Ch. 470, L. 1981.

Cross-References

Dispensing of drugs, Title 37, ch. 2, part 1.

Regulation of prescriptions, Title 37, ch. 7, part 4.

Drug product selection, Title 37, ch. 7, part 5.

Dangerous drugs, Title 45, ch. 9.

Controlled substances, Title 50, ch. 32.

Part 2

Board of Podiatry Examiners

Part Cross-References

Board of Medical Examiners, Title 37, ch. 3, part 2.

37-6-201. Repealed. Sec. 10, Ch. 470, L. 1981.

History: En. Sec. 8, Ch. 2, L. 1923; re-en. Sec. 3154.8, R.C.M. 1935; amd. Sec. 132, Ch. 147, L. 1963; amd. Sec. 62, Ch. 350, L. 1974; amd. Sec. 27, Ch. 439, L. 1975; amd. Sec. 3, Ch. 176, L. 1977; R.C.M. 1947, 66-608; amd. Sec. 11, Ch. 474, L. 1981.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-6-301. License required for practice. It is unlawful for a person to profess to be a podiatrist, to practice or assume the duties incident to podiatry, or to advertise in any form or hold himself out to the public as a podiatrist, or in a sign or advertisement to use the word "podiatrist" or "foot correctionist" or any other term, terms, or letters indicating to the public that he is holding himself out as a podiatrist or foot correctionist in any manner, without first obtaining from the board a license authorizing the practice of podiatry in this state, except under this chapter.

History: **En. Sec. 2, Ch. 2, L. 1923; re-en. Sec. 3154.2, R.C.M. 1935; amd. Sec. 2, Ch. 218, L. 1939; amd. Sec. 56, Ch. 350, L. 1974; R.C.M. 1947, 66-602(part); amd. Sec. 3, Ch. 288, L. 1987.**

37-6-302. Qualifications for licensure — exemptions from examination — temporary licenses. (1) Persons who wish to begin the practice of podiatry in this state shall make application, on a form authorized by the board and furnished by the department, for a license to practice podiatry.

(2) No person may be granted a license to practice podiatry in this state unless he:

(a) is of good moral character as determined by the board;

(b) is a graduate of a school of podiatry approved by the board;

(c) has completed at least 1 year of postgraduate training or has had equivalent experience or training approved by the board;

(d) has made a personal appearance before the board;

(e) has passed an examination administered by the national board of podiatry examiners and is a diplomate of the national board of podiatry examiners; and

(f) has obtained a score of at least 75% on an examination administered by the board.

(3) The board may waive the requirements described in subsections (2)(d) and (2)(f).

(4) A license without written examination may be granted to podiatrists of other states maintaining equal statutory requirements for the practice of podiatry and extending the same reciprocal privilege to this state if they have had a valid license and practiced for at least 2 preceding years in that state prior to filing for reciprocal privilege and by payment of a fee prescribed by the board to the department.

(5) The board may authorize the department to issue a temporary license to practice podiatry in appropriate cases, but no person may be granted a temporary license unless he:

(a) is of good moral character as determined by the board;

(b) is a graduate of a school of podiatry approved by the board;

(c) has completed at least 1 year of postgraduate training or has had equivalent experience or training approved by the board; and

(d) has made a personal appearance before at least one member of the board.

(6) The board may authorize the department to issue a temporary or permanent license subject to probation or other conditions or limitations imposed by the board or may refuse to issue a license if the applicant has engaged in unprofessional conduct or is otherwise unqualified.

History: **En. Sec. 3, Ch. 2, L. 1923; re-en. Sec. 3154.3, R.C.M. 1935; amd. Sec. 3, Ch. 218, L. 1939; amd. Sec. 131, Ch. 147, L. 1963; amd. Sec. 1, Ch. 168, L. 1971; amd. Sec. 1, Ch. 288, L. 1973; amd. Sec. 57, Ch. 350, L. 1974; amd. Sec. 1, Ch. 96, L. 1975; amd. Sec. 1, Ch. 176, L. 1977; R.C.M. 1947, 66-603; amd. Sec. 12, Ch. 345, L. 1981; amd. Sec. 4, Ch. 470, L. 1981; amd. Sec. 4, Ch. 288, L. 1987.**

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Unprofessional conduct, 37-6-310.

37-6-303. Examination — subjects — fees — reexamination. (1) A person not exempt from examination under 37-6-302 and desiring a license to practice podiatry shall be examined in the following subjects: anatomy, chemistry, dermatology, physical diagnosis, materia medica, pathology, physiology, therapeutics, orthopedics, histology, bacteriology, pharmacy, neurology, surgery, shoe therapy, physiotherapy, roentgenology, and podiatric medicine. The minimum passing score is 70% for each subject tested and an average of 75% for all subjects tested.

(2) An examination and license fee prescribed by the board shall be paid to the department.

(3) An applicant failing the examination and being refused a license is entitled within 6 months of the refusal to a reexamination, but one reexamination exhausts his privilege under the original examination. An additional fee shall be paid to the department for a reexamination.

History: **En. Sec. 4, Ch. 2, L. 1923; re-en. Sec. 3154.4, R.C.M. 1935; amd. Sec. 4, Ch. 218, L. 1939; amd. Sec. 58, Ch. 350, L. 1974; R.C.M. 1947, 66-604; amd. Sec. 13, Ch. 345, L. 1981; amd. Sec. 5, Ch. 470, L. 1981; amd. Sec. 5, Ch. 288, L. 1987.**

Cross-References

Duty of Department to administer and grade examination, 37-1-101.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-6-304. Designations on license — recording — renewal — display. (1) A license issued under this chapter shall be designated as a "registered podiatrist's license" or a "temporary podiatrist's license".

(2) Licenses shall be recorded by the department the same as other medical licenses.

(3) A license renewal fee set by the board shall be paid annually on July 1 of each year.

(4) The department shall mail renewal notices no later than May 1 of each year and shall issue a receipt acknowledging payment of an annual renewal fee.

(5) If annual renewal fees are not paid on or before October 1 of each year, the board may revoke the licensee's certificate after giving 30 days' notice to the licensee. A certified letter addressed to the delinquent licensee's last-known address as it appears on the records of the department constitutes notice of intent to revoke the certificate. No certificate may be revoked for nonpayment of a renewal fee if the licensee pays the annual renewal fee plus a penalty prescribed by the board on or before the date fixed for revocation.

(6) A license revoked for nonpayment of the annual renewal fee may be reissued only on original application and payment of an additional fee prescribed by the board.

(7) Licenses shall be conspicuously displayed by podiatrists at their offices or other places of practice.

History: **En. Sec. 5, Ch. 2, L. 1923; re-en. Sec. 3154.5, R.C.M. 1935; amd. Sec. 5, Ch. 218, L. 1939; amd. Sec. 59, Ch. 350, L. 1974; amd. Sec. 3, Ch. 533, L. 1977; R.C.M. 1947, 66-605; amd. Sec. 2, Ch. 66, L. 1981; amd. Sec. 14, Ch. 345, L. 1981; amd. Sec. 6, Ch. 288, L. 1987.**

Cross-References

Prohibition on distribution or sale of mailing lists, 2-6-109.

Duties of County Clerk, 7-4-2611.

Fees of County Clerk, 7-4-2631.

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-6-305. Deposit of moneys collected. All fees shall be collected by the department and deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 7, Ch. 2, L. 1923; re-en. Sec. 3154.7, R.C.M. 1935; amd. Sec. 130, Ch. 147, L. 1963; amd. Sec. 61, Ch. 350, L. 1974; amd. Sec. 1, Ch. 101, L. 1977; amd. Sec. 2, Ch. 176, L. 1977; R.C.M. 1947, 66-607; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 8, Ch. 288, L. 1987.

37-6-306 through 37-6-309 reserved.

37-6-310. Unprofessional conduct. As used in this chapter, "unprofessional conduct" means:

(1) resorting to fraud, misrepresentation, or deception in applying for or in securing a license or in taking the examination provided for in this chapter;

(2) obtaining a fee or other compensation, either directly or indirectly, by the misrepresentation that a manifestly incurable disease, injury, or condition of a person can be cured;

(3) willful disobedience of the rules of the board;

(4) final conviction of an offense involving moral turpitude;

(5) administering, dispensing, or prescribing a narcotic or hallucinatory drug, as defined by the federal food and drug administration or successors, otherwise than in the course of legitimate or reputable professional practice;

(6) final conviction of a violation of a federal or state law regulating the possession, distribution, or use of a narcotic or hallucinatory drug, as defined by the federal food and drug administration;

(7) habitual intemperance or excessive use of narcotic drugs, alcohol, or any other drug or substance to the extent that the use impairs the user physically or mentally;

(8) conduct unbecoming a person licensed to practice podiatry or detrimental to the best interest of the public;

(9) resorting to fraud, misrepresentation, or deception in the examination or treatment of a person or in billing or reporting to a person, company, institution, or organization;

(10) testifying in court on a contingency basis;

(11) conspiring to misrepresent or willfully misrepresenting medical conditions to increase or decrease a settlement, award, verdict, or judgment;

(12) aiding or abetting in the practice of medicine a person not licensed to practice medicine or a person whose license to practice medicine is suspended;

(13) gross malpractice or negligent practice;

(14) practicing podiatry as the partner, agent, or employee of or in joint venture with a person who does not hold a license to practice podiatry within this state; however, this does not prohibit the incorporation of an individual licensee or group of licensees as a professional service corporation under Title 35, chapter 4, nor does this apply to a single consultation with or a single treatment by a person or persons licensed to practice podiatry in another state or territory of the United States or foreign country;

(15) violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate parts 1 through 3 of this chapter or the rules authorized by parts 1 through 3; or

(16) any other act, whether specifically enumerated or not, which in fact constitutes unprofessional conduct.

History: **En. Sec. 9, Ch. 288, L. 1987.**

37-6-311. Refusal or revocation of license — investigation — reinstatement. (1) After notice and opportunity for a hearing, the board may deny, revoke, or refuse to renew a license to practice podiatry if the consensus of the board is that an applicant is not of good moral character or has engaged in unprofessional conduct. The department shall notify the applicant of the board's intent to deny, revoke, or refuse to renew a license by mailing a letter to the applicant's last-known address stating the board's intent and setting a time and place for a hearing. If the applicant fails without cause to appear at the hearing or if the board determines that the applicant is not entitled to a license, the board shall deny, revoke, or refuse to renew the applicant's license.

(2) The board may investigate whenever it is brought to its attention that a licensed podiatrist:

(a) is mentally or physically unable to engage safely in the practice of podiatry;

(b) has procured his license by fraud, misrepresentation, or through error;

(c) has been declared incompetent by a court of competent jurisdiction and thereafter has not been lawfully declared competent;

(d) has a condition that impairs his intellect or judgment to the extent that it incapacitates him in the safe performance of his professional duties;

(e) has been found guilty of unprofessional conduct;

(f) has practiced podiatry while his license was suspended or revoked;

(g) has had his license suspended or revoked by any licensing authority for reasons other than nonpayment of fees; or

(h) while under probation has violated its terms.

(3) The investigation shall be for the purpose of determining the probability that the alleged conditions exist or that the alleged offenses were committed. The investigation may include requiring the person to submit to a physical examination or a mental examination, or both, by a physician or physicians selected by the board if it appears to be in the best interest of the public that this evaluation be secured. The board may examine the hospital records and reports of a licensee as part of the examination, and copies shall be released to the board on written request. If the board has reasonable cause to believe that the alleged conditions exist or that the alleged offenses were committed, the department shall mail to the person at his last-known address a specification of the charges against him, together with a written notice of the time and place of the hearing on such charges, advising him that he may be present in person and by counsel if he so desires to offer evidence and be heard in his defense. The time fixed for the hearing may not be less than 30 days from the date of mailing the notice.

(4) A person, including a member of the board, may file a sworn complaint with the department against a person having a license to practice podiatry in this state charging him with the commission of any of the

offenses set forth in 37-6-310 or with any of the offenses or conditions set forth in subsection (1) or (2) of this section. The complaint shall set forth a specification of the charges. When the complaint is filed, the department shall mail a copy to the person complained against, at his last-known address, together with a written citation of the time and place of the hearing on the complaint.

(5) At the hearing the board shall adopt a resolution finding the person complained against guilty or not guilty of the matters charged. If the board finds that the offenses or conditions referred to in 37-6-310 or subsection (1) or (2) of this section do not exist with respect to the person complained against or if he is found not guilty, the board shall dismiss the charges or complaint. If the board finds that the offenses or conditions referred to in 37-6-310 or in subsection (1) or (2) of this section do exist or the person is found guilty, the board shall:

(a) revoke his license;

(b) suspend his right to practice for a period not exceeding 1 year;

(c) suspend its judgment of revocation on the terms and conditions to be determined by the board;

(d) place him on probation; or

(e) take any other action in relation to disciplining him as the board in its discretion considers proper.

(6) In a case of revocation, suspension, or probation, the department shall enter in its records the facts of the action and of subsequent measures taken by the board with respect to that action.

(7) On the expiration of the term of suspension, the licensee shall be reinstated by the board if he furnishes the board with evidence that he is then of good moral character and conduct or restored to good health and that he has not practiced podiatry in this state during the term of suspension. If the evidence fails to establish to the satisfaction of the board that the holder is then of good moral character and conduct or restored to good health or if the evidence shows he has practiced podiatry in this state during the term of suspension, the board shall revoke the license at a hearing held in accordance with the notice and procedure provided in subsection (1). The revocation is final.

(8) If a person holding a license to practice podiatry under this chapter is by a final order or adjudication of a court of competent jurisdiction determined to be mentally incompetent, seriously mentally ill, or addicted to the use of narcotics, his license may be suspended by the board. The suspension continues until the licensee is found by the court to be restored to reason or cured or until he is discharged as restored to reason or cured and his professional competence has been proven to the satisfaction of the board.

History: En. Sec. 6, Ch. 2, L. 1923; re-en. Sec. 3154.6, R.C.M. 1935; amd. Sec. 6, Ch. 218, L. 1939; amd. Sec. 60, Ch. 350, L. 1974; R.C.M. 1947, 66-606; amd. Sec. 6, Ch. 22, L. 1979; amd. Sec. 7, Ch. 288, L. 1987; amd. Sec. 45, Ch. 83, L. 1989.

Compiler's Comments

1989 Amendment: In (4) and (5) deleted brackets around "37-6-310".

Cross-References

Application of contested case procedure to denial of license, 2-4-631.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunction, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-6-312. Penalty. Any person who shall knowingly violate any of the provisions of this chapter is guilty of a misdemeanor and on conviction shall be fined not less than $250 or more than $1,000 or imprisoned in the county jail for not less than 90 days or more than 1 year, or both fined and imprisoned.

History: En. Sec. 9, Ch. 2, L. 1923; re-en. Sec. 3154.9, R.C.M. 1935; R.C.M. 1947, 66-609; amd. Sec. 6, Ch. 470, L. 1981.

CHAPTER 7

PHARMACY

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Part 11 — Peer Review

37-7-1101. Nonliability for peer review.

Chapter Cross-References

Professional service corporations, Title 35, ch. 4.

General provisions relating to health care practitioners, Title 37, ch. 2.

Use of diagnostic drugs by optometrist not prohibited, 37-10-103.

Dangerous drugs, Title 45, ch. 9.

Controlled substances, Title 50, ch. 32.

Part 1

General

37-7-101. Definitions. Unless the context requires otherwise, in parts 1 through 3 of this chapter the following definitions apply:

(1) "Board" means the board of pharmacy provided for in 2-15-1843.

(2) "Chemical" means medicinal or industrial substances, whether simple, compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.

(3) "Commercial purposes" means the ordinary purposes of trade, agriculture, industry, and commerce, exclusive of the practices of medicine and pharmacy.

(4) "Continuing education" means professional pharmaceutical postgraduate education in the following areas:

(a) the socioeconomic and legal aspects of health care;

(b) the properties and actions of drugs and dosage forms; and

(c) the etiology, characteristics, and therapeutics of the disease state.

(5) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(6) (a) "Drug" means:

(i) articles recognized in the official United States Pharmacopoeia/National Formulary or a supplement to them;

(ii) articles intended for use in diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(iii) articles (other than food) intended to affect the structure or function of the body of man or other animals; and

(iv) articles intended for use as a component of an article specified in subsection (i), (ii), or (iii).

(b) "Drug" does not include devices or their components, parts, or accessories.

(7) "Intern" means a natural person licensed by the department to prepare, compound, dispense, and sell drugs, medicines, chemicals, and poisons under the supervision of a registered and licensed pharmacist.

(8) "Medicine" means a remedial agent which has the property of curing, preventing, treating, or mitigating diseases or which is used for this purpose.

(9) "Person" includes an individual, partnership, corporation, or association.

(10) "Pharmacist" means a natural person licensed by the department to prepare, compound, dispense, and sell drugs, medicines, chemicals, and poisons and who may affix to his name the term "R.Ph.".

(11) "Pharmacy" means an established place registered by the department of commerce in which prescriptions, drugs requiring a prescription, medicines, chemicals, and poisons are compounded, dispensed, vended, or sold.

(12) "Poison" means a substance which, when introduced into the system, either directly or by absorption, produces violent, morbid, or fatal changes or which destroys living tissue with which it comes in contact.

(13) "Prescription" means an order given individually for the person for whom prescribed, directly from the prescriber to the furnisher or indirectly to the furnisher, by means of an order signed by the prescriber and bearing the name and address of the prescriber, his license classification, the name of the patient, the name and the quantity of the drug or drugs prescribed, the directions for use and the date of its issue. These stipulations apply to both written and telephoned prescriptions.

(14) "Wholesale" means a sale for the purpose of resale.

History: En. Sec. 2, Ch. 175, L. 1939; amd. Sec. 1, Ch. 33, L. 1951; amd. Sec. 2, Ch. 241, L. 1971; amd. Sec. 148, Ch. 350, L. 1974; amd. Sec. 1, Ch. 439, L. 1977; R.C.M. 1947, 66-1502; amd. Sec. 7, Ch. 22, L. 1979; amd. Sec. 3, Ch. 379, L. 1981; amd. Sec. 1, Ch. 247, L. 1983.

37-7-102. Practice subject to regulation. The practice of pharmacy is a professional practice affecting the public health, safety, and welfare and is subject to regulation and control in the public interest.

History: En. Sec. 647, Pol. C. 1895; re-en. Sec. 1629, Rev. C. 1907; re-en. Sec. 8, Ch. 134, L. 1915; re-en. Sec. 3177, R.C.M. 1921; re-en. Sec. 3177, R.C.M. 1935; amd. Sec. 7, Ch. 175, L. 1939; amd. Sec. 1, Ch. 70, L. 1957; amd. Sec. 5, Ch. 241, L. 1971; amd. Sec. 153, Ch. 350, L. 1974; amd. Sec. 2, Ch. 439, L. 1977; R.C.M. 1947, 66-1507(part).

37-7-103. Exemptions. Subject only to 37-7-401 and 37-7-402:

(1) nothing in this chapter subjects a person duly licensed in this state to practice medicine, dentistry, or veterinary medicine to inspection by the board or prevents such person from compounding or using drugs, medicines, chemicals, or poisons in his practice or prevents one duly licensed to practice medicine from furnishing to a patient drugs, medicines, chemicals, or poisons as he considers proper in the treatment of the patient;

(2) nothing in this chapter prevents the sale of drugs, medicines, chemicals, or poisons at wholesale;

(3) nothing in this chapter prevents the sale of drugs, chemicals, or poisons either at wholesale or retail for use for commercial purposes or in the arts or changes any of the provisions of this code relating to the sale of insecticides and fungicides, and nothing in this chapter prevents the sale of

common household preparations and other drugs, provided stores selling them are licensed under the terms of this chapter;

(4) nothing in this chapter applies to or may interfere with manufacture, wholesaling, vending, or retailing of flavoring extracts, toilet articles, cosmetics, perfumes, spices, and other commonly used household articles of a chemical nature for use for nonmedicinal purposes;

(5) nothing in this chapter prevents a registered nurse employed by a family planning clinic under contract with the department of health and environmental sciences from dispensing factory prepackaged oral contraceptives if the dispensing is in accordance with a physician's written protocol specifying the circumstances under which dispensing is appropriate and with the board of pharmacy's requirements for labeling, storage, and recordkeeping of drugs.

History: En. Sec. 14, Ch. 175, L. 1939; amd. Sec. 10, Ch. 101, L. 1977; R.C.M. 1947, 66-1525; amd. Sec. 2, Ch. 472, L. 1989.

Compiler's Comments

1989 Amendment: Inserted (5) allowing dispensing of oral contraceptives under certain circumstances; and made minor changes in phraseology. Amendment effective April 8, 1989.

Cross-References

Licensing of physicians, Title 37, ch. 3, part 3.

Licensing of dentists, Title 37, ch. 4, part 3.

Licensing — veterinary medicine, Title 37, ch. 18, part 3.

Pesticides, Title 80, ch. 8.

37-7-104. Qualifications of employee hired to assist board. A person hired by the department to enter and inspect an establishment under this chapter; to examine the books of a manufacturer, druggist, storekeeper, wholesaler, pharmacist, or intern; to assist in a prosecution under this chapter; and to assist the board in supervising internships, reciprocity agreements, professional correspondence, and examinations shall be:

(1) a citizen of the United States and a resident of this state; and

(2) a pharmacist registered under this chapter, with at least 5 years of practical experience.

History: En. 66-1521.1 by Sec. 158, Ch. 350, L. 1974; R.C.M. 1947, 66-1521.1; amd. Sec. 8, Ch. 22, L. 1979.

Cross-References

Duties of Department, 37-1-101.

Part 2

Board of Pharmacy

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1843.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-7-201. Organization — powers and duties. (1) The board shall meet at least once a year to transact its business. The board shall annually elect from its members a president, vice-president, and secretary.

(2) The board shall:

(a) regulate the practice of pharmacy in this state subject to this chapter;

(b) determine the minimum equipment necessary in and for a pharmacy;

(c) regulate, under therapeutic classification, the sale of drugs, medicines, chemicals, and poisons and their labeling;

(d) regulate the quality of drugs and medicines dispensed in this state, using the United States Pharmacopoeia/National Formulary or revisions thereof as the standards;

(e) request the department to enter and inspect, at reasonable times, places where drugs, medicines, chemicals, or poisons are sold, vended, given away, compounded, dispensed, or manufactured. It is a misdemeanor for a person to refuse to permit or otherwise prevent the department from entering these places and making an inspection.

(f) regulate the practice of interns under national standards;

(g) make rules for the conduct of its business;

(h) perform other duties and exercise other powers as this chapter requires;

(i) adopt and authorize the department to publish rules for carrying out and enforcing parts 1 through 3 of this chapter.

(3) The department shall:

(a) license, register, and examine, subject to 37-1-101, applicants whom the board considers qualified under this chapter;

(b) license pharmacies and certain stores under this chapter; and

(c) issue certificates of "certified pharmacy" under this chapter.

History: Ap. p. Sec. 644, Pol. C. 1895; re-en. Sec. 1626, Rev. C. 1907; re-en. Sec. 5, Ch. 134, L. 1915; re-en. Sec. 3174, R.C.M. 1921; re-en. Sec. 3174, R.C.M. 1935; amd. Sec. 4, Ch. 175, L. 1939; amd. Sec. 25, Ch. 93, L. 1969; amd. Sec. 3, Ch. 241, L. 1971; amd. Sec. 150, Ch. 350, L. 1974; Sec. 66-1504, R.C.M. 1947; Ap. p. Sec. 646, Pol. C. 1895; re-en. Sec. 1628, Rev. C. 1907; re-en. Sec. 7, Ch. 134, L. 1915; re-en. Sec. 3176, R.C.M. 1921; re-en. Sec. 3176, R.C.M. 1935; amd. Sec. 6, Ch. 175, L. 1939; amd. Sec. 1, Ch. 81, L. 1969; amd. Sec. 4, Ch. 168, L. 1971; amd. Sec. 4, Ch. 241, L. 1971; amd. Sec. 1, Ch. 71, L. 1974; amd. Sec. 152, Ch. 350, L. 1974; amd. Sec. 7, Ch. 533, L. 1977; Sec. 66-1506, R.C.M. 1947; R.C.M. 1947, 66-1504(1), (2)(a) thru (2)(f), (2)(h) thru (2)(j), (3), 66-1506(part); amd. Sec. 4, Ch. 379, L. 1981.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Duty of Department to provide facilities and keep records, 37-1-101.

Duties of boards, 37-1-131.

Disrupting meeting as disorderly conduct, 45-8-101.

37-7-202. Salaries and expenses of board members. Each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 645, Pol. C. 1895; re-en. Sec. 1627, Rev. C. 1907; re-en. Sec. 6, Ch. 134, L. 1915; re-en. Sec. 3175, R.C.M. 1921; re-en. Sec. 3175, R.C.M. 1935; amd. Sec. 5, Ch. 175, L. 1939; amd. Sec. 26, Ch. 177, L. 1965; amd. Sec. 1, Ch. 82, L. 1969; amd. Sec. 1, Ch. 72, L. 1974; amd. Sec. 151, Ch. 350, L. 1974; amd. Sec. 34, Ch. 439, L. 1975; R.C.M. 1947, 66-1505; amd. Sec. 12, Ch. 474, L. 1981.

37-7-203. Attorney general as board attorney — county attorney to prosecute — investigative powers of board, department, and prosecutors. (1) The attorney general is the attorney for the board. The department shall, under rules adopted by the board, assist the board and the attorney general in the administration and enforcement of parts 1 through 4 of this chapter.

(2) The county attorney of a county in which an offense under parts 1 through 4 of this chapter is committed shall prosecute the offender.

(3) The board, the department, or the county attorney may examine the books of a manufacturer, druggist, storekeeper, wholesale dealer, pharmacist,

intern, or pharmacy in this state for the purpose of acquiring information to aid in prosecutions under parts 1 through 4 of this chapter.

History: En. Sec. 4, Ch. 104, L. 1931; re-en. Sec. 3202.10, R.C.M. 1935; amd. Sec. 10, Ch. 175, L. 1939; amd. Sec. 8, Ch. 241, L. 1971; amd. Sec. 157, Ch. 350, L. 1974; R.C.M. 1947, 66-1521.

Cross-References

Duties of Attorney General, 2-15-501.

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relative to state matters, 7-4-2716.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-7-301. Sale of drugs or medicines unlawful except as provided. (1) It is unlawful for any person to compound, dispense, vend, or sell at retail drugs, medicines, chemicals, or poisons in any place other than a pharmacy, except as hereinafter provided.

(2) It is unlawful for any proprietor, owner, or manager of a pharmacy or any other person to permit the compounding or dispensing of prescriptions or the vending or selling at retail of drugs, medicines, chemicals, or poisons in any pharmacy except by a registered and licensed pharmacist or by an intern registered and licensed by the department, under the supervision of a registered and licensed pharmacist.

(3) It is unlawful for any person to assume or pretend to the title of pharmacist or intern unless such person has a license as such, issued and in force pursuant to parts 1 through 3 of this chapter.

(4) It is unlawful for any person other than a licensed and registered pharmacist or a licensed and registered intern under the supervision of a licensed and registered pharmacist to compound, dispense, vend, or sell at retail drugs, medicines, chemicals, or poisons except as provided in parts 1 through 3.

History: En. Sec. 640, Pol. C. 1895; re-en. Sec. 1622, Rev. C. 1907; re-en. Sec. 1, Ch. 134, L. 1915; re-en. Sec. 3170, R.C.M. 1921; re-en. Sec. 3170, R.C.M. 1935; amd. Sec. 1, Ch. 175, L. 1939; amd. Sec. 1, Ch. 241, L. 1971; R.C.M. 1947, 66-1501; amd. Sec. 9, Ch. 22, L. 1979; amd. Sec. 5, Ch. 379, L. 1981.

37-7-302. Examination — qualifications — fees — reciprocity. (1) The department shall give reasonable notice of examinations by mail to known applicants. The department shall record the names of persons examined, together with the grounds on which the right of each to examination was claimed, and also the names of persons registered by examination or otherwise.

(2) The fee for an examination shall be set by the board at a figure commensurate with costs, which fee may in the discretion of the board be returned to applicants not taking the examination.

(3) To be entitled to examination as a pharmacist, the applicant shall be of good moral character and shall have graduated and received the first professional undergraduate degree from the school of pharmacy of the university of Montana or from an accredited pharmacy degree program that has been approved by the board. However, no applicant may receive a registered pharmacist's license until he has complied with the internship requirements established by the board.

(4) The board may in its discretion authorize the department to grant registration without examination to a pharmacist licensed by a board of pharmacy or a similar board of another state which accords similar recognition to licensees of this state if the requirements for registration in the other state are, in the opinion of the board, equivalent to the requirements of this chapter. The fee for registration by reciprocity shall be prescribed by the board.

(5) Every person licensed and registered under this chapter shall receive from the department an appropriate certificate attesting the fact, which shall be conspicuously displayed at all times in his place of business.

History: En. Sec. 646, Pol. C. 1895; re-en. Sec. 1628, Rev. C. 1907; re-en. Sec. 7, Ch. 134, L. 1915; re-en. Sec. 3176, R.C.M. 1921; re-en. Sec. 3176, R.C.M. 1935; amd. Sec. 6, Ch. 175, L. 1939; amd. Sec. 1, Ch. 81, L. 1969; amd. Sec. 4, Ch. 168, L. 1971; amd. Sec. 4, Ch. 241, L. 1971; amd. Sec. 1, Ch. 71, L. 1974; amd. Sec. 152, Ch. 350, L. 1974; amd. Sec. 7, Ch. 533, L. 1977; R.C.M. 1947, 66-1506(part); amd. Sec. 2, Ch. 341, L. 1981; amd. Sec. 15, Ch. 345, L. 1981; amd. Sec. 6, Ch. 379, L. 1981; amd. Sec. 3, Ch. 247, L. 1983.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Duty of Department to grade examinations, 37-1-101.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

License not required for sale of pesticides, 80-8-207.

37-7-303. Annual renewal fee. (1) A person licensed and registered by the department shall annually pay to the department before June 30 a renewal of registration fee prescribed by the board. A default in the payment of a renewal fee after the date it is due increases the renewal fee as prescribed by the board. It is unlawful for a person who refuses or fails to pay the renewal fee to practice pharmacy in this state. A certificate and renewal expires at the time prescribed, not later than 1 year from its date. A defaulter in a renewal fee may be reinstated within 1 year of the default without examination on payment of the arrears and compliance with the continuing education provisions of this chapter.

(2) The board may charge an additional fee for such license renewal to be used in administering the continuing education provisions of this chapter.

History: En. Sec. 647, Pol. C. 1895; re-en. Sec. 1629, Rev. C. 1907; re-en. Sec. 8, Ch. 134, L. 1915; re-en. Sec. 3177, R.C.M. 1921; re-en. Sec. 3177, R.C.M. 1935; amd. Sec. 7, Ch. 175, L. 1939; amd. Sec. 1, Ch. 70, L. 1957; amd. Sec. 5, Ch. 241, L. 1971; amd. Sec. 153, Ch. 350, L. 1974; amd. Sec. 2, Ch. 439, L. 1977; R.C.M. 1947, 66-1507(part); amd. Sec. 16, Ch. 345, L. 1981; amd. Sec. 7, Ch. 379, L. 1981.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-7-304. Continuing education required. (1) After July 1, 1979, no pharmacist's license may be renewed unless the pharmacist has certified, upon a form prescribed by the board, that he has obtained the number of hours of approved continuing education required by the board.

(2) Upon adequate demonstration of good cause for having failed to obtain the required number of continuing education hours through attendance of regularly accredited programs, the board shall renew the license of a pharmacist who has completed an alternative program of compliance prescribed by the board. Alternative programs shall insure competency essentially equivalent to that gained through regularly accredited continuing education programs and may include home study courses, examinations, or any other program prescribed by the board.

History: En. 66-1507.1 by Sec. 3, Ch. 439, L. 1977; R.C.M. 1947, 66-1507.1.

37-7-305. Continuing education rules. The board shall adopt rules for the proper administration of the continuing education provisions of this chapter, including but not limited to:

(1) determinations as to accredited programs;

(2) the number of hours of continuing education required for license renewal; and

(3) alternative methods for fulfilling continuing education requirements as prescribed in 37-7-304(2).

History: En. 66-1507.2 by Sec. 4, Ch. 439, L. 1977; R.C.M. 1947, 66-1507.2.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-7-306 through 37-7-310 reserved.

37-7-311. Revocation of license issued to pharmacist or intern. The board shall revoke licenses issued by the department to a pharmacist or intern whenever the holder of the license:

(1) has obtained it by false representations or fraud;

(2) is an habitual drunkard or addicted to the use of narcotic drugs;

(3) has been convicted of violating the Federal Food, Drug, and Cosmetic Act (Title 21, chapter 9, U.S.C.); chapter 2 or 7 of Title 37, chapter 9 or 10 of Title 45, or chapter 31 or 32 of Title 50, MCA; or rules adopted under such act or chapters; or

(4) has been found by the board guilty of incompetency in the preparation of prescriptions or guilty of gross immorality affecting the discharge of his duties as a pharmacist or intern.

History: En. Sec. 644, Pol. C. 1895; re-en. Sec. 1626, Rev. C. 1907; re-en. Sec. 5, Ch. 134, L. 1915; re-en. Sec. 3174, R.C.M. 1921; re-en. Sec. 3174, R.C.M. 1935; amd. Sec. 4, Ch. 175, L. 1939; amd. Sec. 25, Ch. 93, L. 1969; amd. Sec. 3, Ch. 241, L. 1971; amd. Sec. 150, Ch. 350, L. 1974; R.C.M. 1947, 66-1504(2)(g); amd. Sec. 10, Ch. 22, L. 1979; amd. Sec. 4, Ch. 362, L. 1981; amd. Sec. 8, Ch. 379, L. 1981; amd. Sec. 4, Ch. 247, L. 1983.

Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-7-312 through 37-7-320 reserved.

37-7-321. Certified pharmacy license — suspension or revocation. (1) The board shall provide for the original certification and annual renewal by the department of every pharmacy doing business in this state. On presentation of evidence satisfactory to the board and on application on a form prescribed by the board and on the payment of an original certification fee prescribed by the board, the department shall issue a license to a pharmacy as a certified pharmacy. However, the license may be granted only to pharmacies operated by registered pharmacists qualified under this chapter. The annual renewal fee for a pharmacy shall be set by the board. Any default in the payment of such renewal fee after the date the same is due shall increase the renewal fee as prescribed by the board. The license must be displayed in a conspicuous place in the pharmacy for which it is issued and expires on June 30 following the date of issue. It is unlawful for a person to conduct a pharmacy, use the word "pharmacy" to identify his business, or use the word "pharmacy" in advertising unless a license has been issued and is in effect.

(2) The board may suspend, revoke, or refuse to renew a pharmacy license:

(a) obtained by false representation or fraud;

(b) when the pharmacy for which the license is issued is kept open for the transaction of business without a pharmacist in charge;

(c) when the person to whom the license is granted has been convicted of:

(i) a violation of parts 1 through 3 of this chapter; or

(ii) a violation of the Federal Food, Drug, and Cosmetic Act (Title 21, chapter 9, U.S.C.); chapter 2 or 7 of Title 37, chapter 9 or 10 of Title 45, or chapter 31 or 32 of Title 50, MCA; or rules adopted under such act or chapters;

(d) when the person to whom the license is granted is a natural person whose pharmacist license has been revoked; or

(e) when the pharmacy is conducted in violation of parts 1 through 3 of this chapter.

(3) Before a license can be revoked, the holder is entitled to a hearing by the board.

History: En. Sec. 8, Ch. 175, L. 1939; amd. Sec. 1, Ch. 76, L. 1959; amd. Sec. 1, Ch. 9, L. 1967; amd. Sec. 1, Ch. 80, L. 1969; amd. Sec. 6, Ch. 241, L. 1971; amd. Sec. 1, Ch. 308, L. 1974; amd. Sec. 154, Ch. 350, L. 1974; amd. Sec. 8, Ch. 533, L. 1977; R.C.M. 1947, 66-1508; amd. Sec. 17, Ch. 345, L. 1981; amd. Sec. 5, Ch. 362, L. 1981; amd. Sec. 9, Ch. 379, L. 1981; amd. Sec. 5, Ch. 247, L. 1983.

Cross-References

Contested case procedure applicable to revocation of licenses, 2-4-631.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Disciplinary authority of boards — injunctions, 37-1-136.

37-7-322. Use of words pharmacy, apothecary, or chemist shop for advertising. It is unlawful for a person to carry on, conduct, or transact a retail business under a name which contains as a part thereof the words "pharmacy", "apothecary", or "chemist shop" or any abbreviation, translation, extension, or variation thereof or in any manner by advertisement circular or poster, sign, or otherwise to describe or refer to the place of business conducted by that person by such term, abbreviation, translation, extension, or variation unless the place so conducted is a pharmacy within the meaning of this chapter and duly licensed as such and in the charge of a registered pharmacist.

History: En. Sec. 11, Ch. 175, L. 1939; amd. Sec. 9, Ch. 101, L. 1977; R.C.M. 1947, 66-1522.

Cross-References

Assumed business names, Title 30, ch. 13, part 2.

37-7-323. Penalty. Any person, firm, partnership, or corporation violating any of the provisions of parts 1 through 3 of this chapter shall be guilty of a misdemeanor and upon conviction for each violation shall be punished accordingly, and any thereof convicted shall automatically lose any license issued by the board.

History: En. Sec. 5, Ch. 104, L. 1931; re-en. Sec. 3202.11, R.C.M. 1935; amd. Sec. 15, Ch. 175, L. 1939; R.C.M. 1947, 66-1526.

Cross-References

Disciplinary authority of boards — injunctions, 37-1-136.

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

Misdemeanor penalty when no penalty specified, 46-18-212.

Fines in felony and misdemeanor cases, 46-18-231.

37-7-324. Deposit of fees and fines. Fines paid under this chapter, except those paid to a justice's court, and fees collected by the department for registration and licenses issued under this chapter shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 6, Ch. 104, L. 1931; re-en. Sec. 3202.12, R.C.M. 1935; amd. Sec. 16, Ch. 175, L. 1939; amd. Sec. 134, Ch. 147, L. 1963; amd. Sec. 159, Ch. 350, L. 1974; R.C.M. 1947, 66-1527; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 23, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Part 4

Prescriptions Regulated — Poisons

Part Cross-References

Dispensing of drugs, Title 37, ch. 2, part 1.

Dangerous drugs, Title 45, ch. 9.

Controlled substances, Title 50, ch. 32.

37-7-401. Restrictions upon sale or prescription of opiates — coding prohibited — refilling prescriptions. (1) It is unlawful for any physician, physician assistant-certified, or nurse specialist to sell or give to or prescribe for any person any opium, morphine, alkaloid-cocaine, or alpha or beta eucaine or codeine or heroin or any derivative, mixture, or preparation of any of them, except to a patient believed in good faith to require the same for medical use and in quantities proportioned to the needs of the patient.

(2) A prescription must be written so that it can be compounded by any registered pharmacist. The coding of any prescription is a violation of this section.

(3) A prescription marked "non repetatur", "non rep", or "N.R." cannot be refilled. A prescription marked to be refilled by a specified amount may be filled by any registered pharmacist the number of times marked on the prescription. A prescription not bearing any refill instructions may not be refilled without first obtaining permission from the prescriber. A prescription may not be refilled for more than 3 years from the date it was originally filled. A narcotic prescription may not be refilled.

History: En. Sec. 2, Ch. 11, L. 1911; re-en. Sec. 3187, R.C.M. 1921; re-en. Sec. 3187, R.C.M. 1935; amd. Sec. 2, Ch. 33, L. 1951; R.C.M. 1947, 66-1514; amd. Sec. 10, Ch. 379, L. 1981; amd. Sec. 17, Ch. 97, L. 1989; amd. Sec. 2, Ch. 444, L. 1989.

Compiler's Comments

1989 Amendments: Chapter 97 near beginning of (1), after "physician", inserted reference to physician assistant-certified.

Chapter 444, in (1), after "physician", inserted "or nurse specialist"; and made minor changes in phraseology and style. Amendment effective July 1, 1989.

37-7-402. Penalty for violation of provisions on sale or prescription of opiates, coding, refilling. Any person found guilty of the violation of 37-7-401 shall be punished for each separate offense (and each and every individual case shall constitute a separate offense) by a fine of not less than $50 or more than $500 or by imprisonment in the county jail for a period of not less than 60 days or more than 100 days or by both such fine and imprisonment.

History: En. Sec. 3, Ch. 11, L. 1911; re-en. Sec. 3188, R.C.M. 1921; re-en. Sec. 3188, R.C.M. 1935; R.C.M. 1947, 66-1515.

Cross-References

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

Fines in felony and misdemeanor cases, 46-18-231.

37-7-403. Repealed. Sec. 8, Ch. 247, L. 1983.

History: En. Sec. 1, Ch. 11, L. 1935; re-en. Sec. 3185.1, R.C.M. 1935; amd. Sec. 155, Ch. 350, L. 1974; R.C.M. 1947, 66-1511.

37-7-404. Repealed. Sec. 8, Ch. 247, L. 1983.

History: En. Sec. 2, Ch. 11, L. 1935; re-en. Sec. 3185.2, R.C.M. 1935; amd. Sec. 156, Ch. 350, L. 1974; R.C.M. 1947, 66-1512.

37-7-405. Repealed. Sec. 8, Ch. 247, L. 1983.

History: En. Sec. 3, Ch. 11, L. 1935; re-en. Sec. 3185.3. R.C.M. 1935; R.C.M. 1947, 66-1513.

Part 5

Drug Product Selection

37-7-501. Short title. This part may be cited as the "Montana Drug Product Selection Act".

History: En. 66-1528 by Sec. 1, Ch. 403, L. 1977; R.C.M. 1947, 66-1528.

37-7-502. Definitions. As used in this part, the following definitions apply:

(1) "Bioavailability" means the extent and rate of absorption from a dosage form as reflected by the time-concentration curve of the administered drug in the systemic circulation.

(2) "Bioequivalent" means a chemical equivalent which, when administered to the same individual in the same dosage regimen, will result in comparable bioavailability.

(3) "Brand name" means the proprietary or the registered trademark name given to a drug product by its manufacturer, labeler, or distributor and placed upon the drug, its container, label, or wrapping at the time of packaging.

(4) "Chemical equivalent" means drug products that contain the same amounts of the same therapeutically active ingredients in the same dosage forms and that meet present compendium standards.

(5) "Drug product" means a dosage form containing one or more active therapeutic ingredients along with other substances included during the manufacturing process.

(6) "Generic name" means the chemical or established name of a drug product or drug ingredient published in the latest edition of the official United States Pharmacopoeia/National Formulary.

(7) "Person" means an individual, firm, partnership, association, corporation, or any other entity, whether organized for profit or not.

(8) "Prescriber" means a practitioner licensed under the professional laws of the state to administer medicine and drugs.

(9) "Present compendium standard" means the official standard for drug excipients and drug products listed in the latest revision of the United States Pharmacopoeia/National Formulary.

(10) "Product selection" means to dispense without the prescriber's express authorization a different drug product in place of the drug product prescribed.

(11) "Therapeutically equivalent" means those chemical equivalents which, when administered in the same dosage regimen, will provide essentially the same therapeutic effect as measured by the control of a symptom or a disease and/or toxicity.

History: En. 66-1529 by Sec. 2, Ch. 403, L. 1977; R.C.M. 1947, 66-1529; amd. Sec. 11, Ch. 379, L. 1981.

37-7-503. Rulemaking. The board of pharmacy may adopt, amend, or repeal rules necessary for the implementation, continuation, and enforcement of this part in accordance with the Montana Administrative Procedure Act.

History: En. 66-1535 by Sec. 8, Ch. 403, L. 1977; R.C.M. 1947, 66-1535; amd. Sec. 1, Ch. 247, L. 1983.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

37-7-504. General prohibition of drug substitution. No person may substitute a drug different from the one ordered or deviate in any manner from the requirements of an order or prescription, except as provided in this part.

History: En. 66-1523(2) by Sec. 10, Ch. 403, L. 1977; R.C.M. 1947, 66-1523.

Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

37-7-505. Product selection permitted — limitation. (1) Except as limited by subsection (2) of this section and unless instructed otherwise by the purchaser, the pharmacist who receives a written or oral prescription for a specific drug product by brand or proprietary name may select a less expensive drug product with the same generic name, the same strength, quantity, dose, and dosage form as the prescribed drug which is, in the pharmacist's professional opinion, therapeutically equivalent, bioequivalent, and bioavailable.

(2) If, in the professional opinion of the prescriber, it is medically necessary for his patient that an equivalent drug product not be selected, the prescriber may so indicate by certifying that in his professional judgment the specific brand-name drug product is medically necessary for that particular patient. In the case of a prescription transmitted orally, the prescriber must expressly indicate to the pharmacist that the brand-name drug product prescribed is medically necessary.

History: En. 66-1530 by Sec. 3, Ch. 403, L. 1977; R.C.M. 1947, 66-1530.

37-7-506. Notice to purchaser. (1) A pharmacist who selects a drug product as provided in 37-7-505 shall notify the person presenting the prescription that he may refuse the product selection as provided in 37-7-505.

(2) Each pharmacy shall display in a prominent place that is in clear and unobstructed public view, at or near the place where prescriptions are dispensed, a sign stating: "This pharmacy may be able to select a less expensive drug product which is equivalent to the one prescribed by your physician unless you or your physician request otherwise." The printing on the sign shall be in block letters not less than 1 inch in height.

History: En. 66-1531 by Sec. 4, Ch. 403, L. 1977; R.C.M. 1947, 66-1531.

37-7-507. Savings passed on. (1) A pharmacist selecting a less expensive drug product must pass on to the purchaser the full amount of the savings realized by the product selection. In no event may the pharmacist charge a different professional fee for dispensing a different drug product than the drug product originally prescribed.

(2) If the prescriber prescribes a drug product by its generic name, the pharmacist must, consistent with reasonable judgment, dispense the lowest retail priced, therapeutically equivalent brand which is in stock.

History: En. 66-1532 by Sec. 5, Ch. 403, L. 1977; R.C.M. 1947, 66-1532.

37-7-508. Product selection not practice of medicine. The selection of a drug product by a registered pharmacist under the provisions of this part does not constitute the practice of medicine.

History: En. 66-1533 by Sec. 6, Ch. 403, L. 1977; R.C.M. 1947, 66-1533.

Cross-References

Exemption from physician's licensing requirements, 37-3-103.

37-7-509. Limitations on liability. (1) A pharmacist making a product selection under the provisions of this part assumes no greater responsibility for selecting the dispensed drug product than he would incur in filling a prescription for a drug product prescribed by a generic name.

(2) When a pharmacist selects a drug product, the prescriber may not be held liable in an action for loss, damage, injury, or death to a person caused

by the use of the selected drug product, except that if the original drug product was incorrectly prescribed, the prescriber is not relieved of liability.

History: En. 66-1534 by Sec. 7, Ch. 403, L. 1977; R.C.M. 1947, 66-1534.

Cross-References

Availability of remedies — liability, Title 27, ch. 1.

Montana Medical Legal Panel Act, Title 27, ch. 6.

37-7-510. Penalty. (1) In addition to all other penalties provided by law, a person who violates the provisions of 37-7-505, 37-7-506, or 37-7-507 or any rule promulgated as provided in 37-7-503 shall be fined no more than $250 for each violation.

(2) The penalty imposed under this part may be remitted or mitigated upon such terms and conditions as the board of pharmacy considers proper and consistent with the public health and safety.

(3) A civil penalty imposed under this part becomes due and payable when the person incurring the penalty receives a notice in writing from the board of pharmacy. The notice shall be sent by registered or certified mail and must include:

(a) reference to the particular sections of the statute or rule;

(b) a short and plain statement of the matters asserted as charged;

(c) a statement of the amount of the penalty or penalties imposed; and

(d) a statement of the person's right to request a hearing.

(4) The person to whom the notice is addressed has 20 days from the date of the notice in which to make written application for a hearing before the board of pharmacy.

History: En. 66-1536 by Sec. 11, Ch. 403, L. 1977; R.C.M. 1947, 66-1536; amd. Sec. 1, Ch. 247, L. 1983.

Cross-References

Contested case as including licensing, 2-4-102, 2-4-631.

Contested case procedure, Title 2, ch. 4, part 6.

Criminal responsibility of corporation, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

Parts 6 through 10 reserved

Part 11

Peer Review

Part Cross-References

Licensing investigation and review — record access, 37-1-135.

Health care practitioners — nonliability for peer review, Title 37, ch. 2, part 2.

37-7-1101. Nonliability for peer review. No member, employee, or volunteer intervenor of the Montana pharmaceutical association in its peer review program is liable in damages to any person for any action taken or recommendation made within the scope of the program if the member, employee, or volunteer acts in good faith in accordance with the rules of the association.

History: En. Sec. 1, Ch. 235, L. 1987.

CHAPTER 8

NURSING

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Chapter Cross-References

Limits on liability for emergency care rendered at scene of accident or emergency, 27-1-714.

Limits on liability of health care provider in emergency situations, 27-1-734.

Professional service corporations, Title 35, ch. 4.

General provisions relating to health care practitioners, Title 37, ch. 2.

Limitations on dentistry and oral surgery practices involving general anesthesia, 37-4-511.

Collective bargaining for nurses, Title 39, ch. 32.

Nurses required to report child abuse, 41-3-201.

Health care information, Title 50, ch. 16.

Part 1

General

Part Cross-References

Duty of nurse to report violation of Montana Elder Abuse Prevention Act, 53-5-511.

37-8-101. Purpose. (1) In order to safeguard life and health, any person practicing or offering to practice professional nursing in this state for compensation or personal gain shall be required to submit evidence that he or she is qualified to practice and shall be licensed as hereinafter provided.

(2) In order to safeguard life and health, any person practicing or offering to practice practical nursing in this state for compensation or personal gain shall be required to submit evidence that he or she is qualified to practice and shall be licensed as hereinafter provided.

History: En. Sec. 1, Ch. 243, L. 1953; amd. Sec. 1, Ch. 291, L. 1967; R.C.M. 1947, 66-1221(part).

37-8-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of nursing provided for in 2-15-1844.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Practice of nursing" embraces two classes of nursing service and activity, as follows:

(a) "Practice of professional nursing" means the performance for compensation of services requiring substantial specialized knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing theory as a basis for the nursing process. The nursing process is the assessment, nursing analysis, planning, nursing intervention, and evaluation in the promotion and maintenance of health; the prevention, casefinding, and management of illness, injury, or infirmity; and the restoration of optimum function. The term also includes administration, teaching, counseling, supervision, delegation, and evaluation of nursing practice and the administration of medications and treatments prescribed by physicians, dentists, osteopaths, or podiatrists authorized by state law to prescribe medications and treatments. Each registered nurse is directly accountable and responsible to the consumer for the quality of nursing care rendered. As used in this subsection (3)(a):

(i) "nursing analysis" is the identification of those client problems for which nursing care is indicated and may include referral to medical or community resources;

(ii) "nursing intervention" is the implementation of a plan of nursing care necessary to accomplish defined goals.

(b) "Practice of practical nursing" means the performance for compensation of services requiring basic knowledge of the biological, physical, behavioral, psychological, and sociological sciences and of nursing procedures. Practical nursing practice utilizes standardized procedures in the observation and care of the ill, injured, and infirm; in the maintenance of health; in action to safeguard life and health; and in the administration of medications and treatments prescribed by a physician, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments. These services are performed under the supervision of a registered nurse or a physician, dentist, osteopath, or podiatrist authorized by state law to prescribe medications and treatments.

(4) "Nursing education program" means any board-approved school that prepares graduates for initial licensure under this chapter. Nursing education programs for:

(a) professional nursing may be a department, school, division, or other administrative unit in a senior or junior college or university;

(b) practical nursing may be a department, school, division, or other administrative unit in a vocational-technical center or junior college.

History: **En. Sec. 2, Ch. 243, L. 1953; amd. Sec. 2, Ch. 291, L. 1967; amd. Sec. 114, Ch. 350, L. 1974; amd. Sec. 1, Ch. 180, L. 1975; R.C.M. 1947, 66-1222; amd. Sec. 4, Ch. 248, L. 1981; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 504, L. 1989.**

Compiler's Comments

1989 Amendment: In second sentence of (3)(b), after "procedures", deleted "leading to predictable outcomes".

37-8-103. Exemptions — limitations on authority conferred. (1) No provisions of this law may be construed as prohibiting:

(a) gratuitous nursing by friends or members of the family;

(b) incidental care of the sick by domestic servants or persons primarily employed as housekeepers;

(c) nursing assistance in the case of an emergency;

(d) the practice of nursing by students enrolled in approved nursing education programs;

(e) the practice of nursing in this state by any legally qualified nurse of another state whose engagement requires the nurse to accompany and care for a patient temporarily residing in this state during the period of one such engagement not to exceed 6 months in length, provided that person does not represent or hold herself or himself out to be a nurse licensed to practice in this state;

(f) the practice of any legally qualified nurse of another state who is employed by the United States government or any bureau, division, or agency thereof while in the discharge of that nurse's official duties;

(g) nursing or care of the sick, with or without compensation, when done in connection with the practice of the religious tenets of any well-established religion or denomination by adherents thereof;

(h) nursing or care of a minor who is in the care of a licensed foster parent, to the same extent such care may be provided by a parent or guardian; and

(i) the execution of a death sentence pursuant to 46-19-103.

(2) This chapter may not be construed as conferring any authority to practice medicine, surgery, or any combination thereof; to confer any authority to practice any of the healing arts prescribed by law to be practiced in the state of Montana; or to permit any person to undertake the treatment of disease by any of the methods employed in those arts unless the licensee has been qualified under the applicable law or laws licensing the practice of those professions or healing arts in the state of Montana.

History: **En. Sec. 22, Ch. 243, L. 1953; amd. Sec. 7, Ch. 291, L. 1967; amd. Sec. 4, Ch. 101, L. 1977; R.C.M. 1947, 66-1242; amd. Sec. 1, Ch. 148, L. 1979; amd. Sec. 5, Ch. 248, L. 1981; amd. Sec. 2, Ch. 411, L. 1983.**

Cross-References

Exemptions from physician's licensing requirements, 37-3-103.

Part 2

Board of Nursing

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1844.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-8-201. Seal — board records public — legal counsel. (1) The board shall have a seal which shall be used to authenticate its acts. The seal shall have inscribed the words "Board of Nursing—Official Seal" and a device or legend designated by the board.

(2) The records and files of the board kept by the department are at all times open to public inspection.

(3) The attorney general is the attorney and legal counsel for the board, but the department may, with the approval of the attorney general, appoint additional legal counsel to assist the board and department in the administration and enforcement of this chapter.

History: En. Sec. 3, Ch. 243, L. 1953; amd. Sec. 115, Ch. 350, L. 1974; R.C.M. 1947, 66-1223; amd. Sec. 6, Ch. 248, L. 1981.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

Public records, Title 2, ch. 6.

Duties of Attorney General, 2-15-501.

Preservation of records, Title 22, ch. 3, part 2.

Duty of Department to keep records, 37-1-101.

37-8-202. Organization — meetings — powers and duties. (1) The board shall meet annually and shall elect from among the nine members a president and a secretary. The board shall hold other meetings when necessary to transact its business. A majority of the board constitutes a quorum at any meeting. The department shall keep complete minutes and records of the meetings and rules and orders promulgated by the board.

(2) The board may make rules necessary to administer this chapter. The board shall prescribe standards for schools preparing persons for registration and licensure under this chapter. It shall provide for surveys of schools at times it considers necessary. It shall approve programs that meet the requirements of this chapter and of the board. The department shall, subject to 37-1-101, examine and issue to and renew licenses of qualified applicants. The board shall conduct hearings on charges which may call for discipline of a licensee, revocation of a license, or removal of schools of nursing from the approved list. It shall cause the prosecution of persons violating this chapter and may incur necessary expenses for prosecutions.

(3) The board may adopt and the department shall publish forms for use by applicants and others, including license, certificate, and identity forms and other appropriate forms and publications convenient for the proper administration of this chapter. The board may fix reasonable fees for incidental services, within the subject matter delegated by this chapter.

(4) The board may participate in and pay fees to a national organization of state boards of nursing to assure interstate endorsement of licenses.

(5) (a) The board may define the educational requirements and other qualifications applicable to specialty areas of nursing. Specialty areas of nursing are those that require additional professional education beyond the basic nursing degree required of a registered nurse. Additional education must be obtained in courses offered in a university setting or its equivalent. The applicant must be certified by a specialty area certifying body. Specialty areas of nursing include nurse practitioners, nurse-midwives, and nurse-anesthetists.

(b) The board of nursing and the board of medical examiners, acting jointly, shall adopt rules regarding authorization for prescriptive authority of nurse specialists. If considered appropriate for a nurse specialist who applies to the boards for authorization, prescriptive authority must be granted.

(6) The board shall establish a program to assist licensed nurses who are found to be physically or mentally impaired by habitual intemperance or the excessive use of narcotic drugs, alcohol, or any other drug or substance. The program must provide assistance to licensees in seeking treatment for substance abuse and monitor their efforts toward rehabilitation. For purposes of funding this program, the board shall adjust the license fee provided for in 37-8-431 commensurate with the cost of the program.

History: En. Sec. 5, Ch. 243, L. 1953; amd. Sec. 116, Ch. 350, L. 1974; amd. Sec. 2, Ch. 180, L. 1975; R.C.M. 1947, 66-1225; amd. Sec. 7, Ch. 248, L. 1981; amd. Sec. 2, Ch. 282, L. 1987; amd. Sec. 1, Ch. 430, L. 1989; amd. Sec. 3, Ch. 444, L. 1989.

Compiler's Comments

1989 Amendments: Chapter 430 inserted (6) relating to a program to assist licensed nurses with alcohol or drug problems. Amendment effective July 1, 1989.

Chapter 444 inserted (5)(b) authorizing prescriptive authority; and made minor changes in phraseology. Amendment effective July 1, 1989.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Meeting defined, 2-3-202.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Contested case procedure, Title 2, ch. 4, part 6.

Open meetings, Title 3, ch. 3, part 2.

Duty of Department to provide facilities, 37-1-101.

Duties of boards, 37-1-131.

Disrupting meeting as disorderly conduct, 45-8-101.

37-8-203. Compensation of members — expenses. Each member of the board shall receive compensation and travel expenses as provided in 37-1-133.

History: En. Sec. 6, Ch. 243, L. 1953; amd. Sec. 117, Ch. 350, L. 1974; amd. Sec. 3, Ch. 180, L. 1975; amd Sec. 31, Ch. 439, L. 1975; R.C.M. 1947, 66-1226; amd. Sec. 13, Ch. 474, L. 1981.

37-8-204. Qualifications of secretary. Any secretary hired by the department to provide services to the board in connection with the board's duties of prescribing curricula and standards for nursing schools, making surveys of and approving schools and courses, evaluating and approving courses for affiliation of student nurses, and reviewing qualifications of applicants for licensure for the board shall be:

(1) a citizen of the United States;

(2) a graduate of an approved school of nursing;

(3) a holder of at least a master's degree with postgraduate courses in nursing;

(4) a registered professional nurse with at least 5 years' experience in teaching or administration in an approved school of nursing.

History: En. Sec. 19, Ch. 243, L. 1953; amd. Sec. 126, Ch. 350, L. 1974; amd. Sec. 6, Ch. 180, L. 1975; R.C.M. 1947, 66-1239(3); amd. Sec. 2, Ch. 83, L. 1981.

Part 3

Schools of Nursing

37-8-301. Nursing education programs — application for approval. An institution desiring to conduct a nursing education program in the state shall apply to the department and submit evidence that it is prepared to carry out an educational program that complies with the provisions of this chapter and the rules adopted by the board pursuant to this section. The board shall adopt rules relating to the conduct of nursing education programs that are directed toward insuring qualifications to practice as a professional nurse or a practical nurse in those areas of service specified in 37-8-102.

History: En. Sec. 18, Ch. 243, L. 1953; amd. Sec. 125, Ch. 350, L. 1974; R.C.M. 1947, 66-1238; amd. Sec. 8, Ch. 248, L. 1981.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-8-302. Nursing education programs — survey and approval. (1) It is the duty of the department through its authorized employees or representatives to periodically survey all nursing education programs. Written reports of such surveys shall be submitted to the board. If, in the opinion of the board, the requirements for an approved nursing education program are met, the program shall be granted initial or continuing approval.

(2) If the board determines that any approved nursing education program is not maintaining the standards required by law and the rules established by the board, notice shall be given to the nursing education program specifying the areas of noncompliance. A program that fails to correct these areas of noncompliance within the time designated by the board shall be removed from the list of approved nursing education programs.

History: En. Sec. 19, Ch. 243, L. 1953; amd. Sec. 126, Ch. 350, L. 1974; amd. Sec. 6, Ch. 180, L. 1975; R.C.M. 1947, 66-1239(1), (2); amd. Sec. 9, Ch. 248, L. 1981.

Part 4

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-8-401. Unlawful to indicate licensure without valid license. It shall be unlawful for any person to use any title, abbreviation, sign, card, or device to indicate that such person is a registered professional nurse or a licensed practical nurse unless such person has been duly licensed under the provisions of this chapter, and the license of such person shall be valid and in force in compliance with the provisions of this chapter.

History: En. Sec. 1, Ch. 243, L. 1953; amd. Sec. 1, Ch. 291, L. 1967; R.C.M. 1947, 66-1221(part).

37-8-402 through 37-8-404 reserved.

37-8-405. Professional nursing — qualifications of applicants for license. An applicant for a license to practice as a registered professional nurse shall submit to the department written evidence, verified by oath, that the applicant:

(1) has successfully completed at least an approved 4-year high school course of study or the equivalent as determined by the office of the superintendent of public instruction;

(2) has completed the basic professional curriculum in an approved school of nursing and holds a diploma therefrom; and

(3) meets other qualification requirements the board prescribes.

History: En. Sec. 7, Ch. 243, L. 1953; amd. Sec. 118, Ch. 350, L. 1974; R.C.M. 1947, 66-1227; amd. Sec. 3, Ch. 84, L. 1983.

Cross-References

Oath defined, 1-1-201.

Proof of execution, Title 1, ch. 5, part 3.

Power of notary to take acknowledgments, 1-5-416.

Oaths, Title 1, ch. 6.

Affidavits, Title 26, ch. 1, part 10.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Perjury, 45-7-201.

False swearing, 45-7-202.

37-8-406. License — professional nursing — examination. (1) An applicant for a license to practice as a registered professional nurse is required to pass a written examination in subjects the board determines necessary. A written examination may be supplemented by an oral or practical examination. The board may use any national standardized examination for professional nurse licensure identified in its rules. The passing score on such examination shall be established by the board in its rules. On successfully passing the examination, an applicant shall be issued a license to practice professional nursing.

(2) The board shall establish in its rules the requirements for rewriting the examination for those persons failing the examination on the first writing and subsequent writing.

History: En. Sec. 8, Ch. 243, L. 1953; amd. Sec. 1, Ch. 195, L. 1963; amd. Sec. 3, Ch. 291, L. 1967; amd. Sec. 119, Ch. 350, L. 1974; amd. Sec. 4, Ch. 180, L. 1975; amd. Sec. 1, Ch. 215, L. 1975; R.C.M. 1947, 66-1228(1); amd. Sec. 10, Ch. 248, L. 1981; amd. Sec. 18, Ch. 345, L. 1981.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Duty of Department to administer and grade examinations, 37-1-101.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-8-407. Endorsement — professional nursing. The board may issue without examination a license to practice nursing as a registered professional nurse to an applicant who has been licensed or registered as a professional nurse under the laws of another state or territory if in the opinion of the board the applicant meets the qualifications required of registered nurses in this state at the time the applicant graduated from a school of nursing. The applicant shall pay a fee prescribed by the board at the time the application is submitted, which shall be returned to the applicant if the application is withdrawn not later than 5 days prior to final submission of the application to the board, subject to deduction of an amount prescribed by the board to be retained by the department.

History: En. Sec. 8, Ch. 243, L. 1953; amd. Sec. 1, Ch. 195, L. 1963; amd. Sec. 3, Ch. 291, L. 1967; amd. Sec. 119, Ch. 350, L. 1974; amd. Sec. 4, Ch. 180, L. 1975; amd. Sec. 1, Ch. 215, L. 1975; R.C.M. 1947, 66-1228(2), (3); amd. Sec. 11, Ch. 248, L. 1981; amd. Sec. 19, Ch. 345, L. 1981.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Affidavits, Title 26, ch. 1, part 10.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-8-408. Title and abbreviation of registered nurse. Any person who holds a valid license to practice as a registered professional nurse in this state shall have the right to use the title "Registered Nurse" and the abbreviation "R.N.".

History: En. Sec. 9, Ch. 243, L. 1953; R.C.M. 1947, 66-1229.

37-8-409. Midwifery — when professional nurse may practice. (1) A person licensed under 37-8-406 or 37-8-407 who holds a certificate in nurse-midwifery from the American college of nurse-midwives may practice midwifery upon approval by the board of an amendment to her license granting a certificate of nurse-midwifery. The board shall grant a certificate of nurse-midwifery to a person who submits written verification of certification by the American college of nurse-midwives and who meets such other qualification requirements as the board may prescribe.

(2) The board may give temporary approval to practice nurse-midwifery for up to 4 months to a person who has taken the American college of nurse-midwives national certification examination, pending receipt of official notification of the results of the examination.

History: En. 66-1246 by Sec. 2, Ch. 97, L. 1974; R.C.M. 1947, 66-1246; amd. Sec. 12, Ch. 248, L. 1981.

Cross-References

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-8-410 through 37-8-414 reserved.

37-8-415. Licensed practical nursing — qualifications of applicants. An applicant for a license to practice as a licensed practical nurse shall submit to the board written evidence, verified by oath, that the applicant:

(1) has successfully completed at least an approved 4-year high school course of study or the equivalent as determined by the office of the superintendent of public instruction;

(2) is a graduate of an approved practical nursing education program that is authorized to prepare persons for licensure as practical nurses; and

(3) meets other qualification requirements the board prescribes in its rules.

History: En. Sec. 11, Ch. 243, L. 1953; amd. Sec. 4, Ch. 291, L. 1967; amd. Sec. 120, Ch. 350, L. 1974; R.C.M. 1947, 66-1231; amd. Sec. 13, Ch. 248, L. 1981.

Cross-References

Oath defined, 1-1-201.

Proof of execution, Title 1, ch. 5, part 3.

Power of notary to take acknowledgments, 1-5-416.

Oaths, Title 1, ch. 6.

Affidavits, Title 26, ch. 1, part 10.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Perjury, 45-7-201.

False swearing, 45-7-202.

37-8-416. Licensed practical nursing — examination. An applicant for a license to practice as a practical nurse is required to pass a written examination in subjects as the board determines. A written examination may be supplemented by an oral or practical examination. The board may use any nationally standardized examination for practical nurse licensure identified by the board in its rules. The passing score shall be established by the board in its rules. On successfully passing the examination, the board shall issue to the applicant a license to practice as a licensed practical nurse.

History: En. Sec. 12, Ch. 243, L. 1953; amd. Sec. 5, Ch. 291, L. 1967; amd. Sec. 121, Ch. 350, L. 1974; amd. Sec. 5, Ch. 180, L. 1975; R.C.M. 1947, 66-1232(1); amd. Sec. 14, Ch. 248, L. 1981.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

37-8-417. Endorsement — licensed practical nursing. The board may issue a license to practice as a licensed practical nurse, without examination, to an applicant who has been licensed or registered as a licensed practical nurse or person entitled to perform like services under a different title under the laws of another state or territory if, in the opinion of the board, the applicant meets the requirements for practical nurses in this state.

History: En. Sec. 12, Ch. 243, L. 1953; amd. Sec. 5, Ch. 291, L. 1967; amd. Sec. 121, Ch. 350, L. 1974; amd. Sec. 5, Ch. 180, L. 1975; R.C.M. 1947, 66-1232(2), (3); amd. Sec. 15, Ch. 248, L. 1981.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-8-418. Licensed practical nursing — application fee. An applicant for a license to practice as a licensed practical nurse shall pay a fee prescribed by the board to the department at the time the application is submitted, which fee shall be returned to the applicant if the application is withdrawn not later than 5 days prior to the date of examination or the final submission to the board of application for endorsement without examination, subject to a deduction of an amount prescribed by the board to be retained by the department.

History: En. Sec. 14, Ch. 243, L. 1953; amd. Sec. 2, Ch. 195, L. 1963; amd. Sec. 122, Ch. 350, L. 1974; amd. Sec. 2, Ch. 215, L. 1975; R.C.M. 1947, 66-1234; amd. Sec. 20, Ch. 345, L. 1981.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-8-419. Title and abbreviation of licensed practical nurse. Any person who holds a valid license to practice as a licensed practical nurse in this state shall have the right to use the title "Licensed Practical Nurse" and the abbreviation "L.P.N.".

History: En. Sec. 15, Ch. 243, L. 1953; R.C.M. 1947, 66-1235.

37-8-420 through 37-8-429 reserved.

37-8-430. Temporary work permit. (1) The board may issue a temporary work permit for a period not to exceed 90 days to a registered professional nurse or licensed practical nurse who is currently licensed in another state, a territory of the United States, or the District of Columbia and who is an applicant for licensure by endorsement. Such permit is not renewable.

(2) The board may issue a temporary work permit to a graduate of an approved nursing education program or approved practical nursing education program pending the results of the first licensing examination following graduation. Such permit is not renewable.

(3) To protect the public, the board shall adopt such rules as are necessary to limit the practice of persons issued temporary work permits. Such rules shall include a provision that such practice be supervised by a physician, dentist, osteopath, podiatrist, or registered nurse until a license is issued and shall include a definition of supervision.

History: En. Sec. 19, Ch. 248, L. 1981.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-8-431. Renewal of license. (1) The license of a person licensed under this chapter must be annually renewed. Before December 1 of each year, the department shall mail an application form for renewal of license to every person to whom a license was issued or renewed during the year. The applicant shall carefully complete and subscribe the application form and return it to the department with a renewal fee prescribed by the board before January 1.

(2) The board may increase or decrease the annual license fee so as to maintain in the state special revenue fund at all times an adequate amount to be used for the purpose of administering, policing, and enforcing the provisions of this chapter. On receipt of the application and fee, the department shall verify the accuracy of the application against its record and from other sources the board considers reliable and issue to the applicant a certificate of renewal for the current year beginning January 1 and expiring December 31 following. The certificate of renewal renders the holder a legal practitioner of nursing for the period stated in the certificate of renewal.

(3) A licensee who allows his license to lapse by failing to renew the license may be reinstated by the board on satisfactory explanation for the failure to renew license and on payment of the current renewal fee prescribed by the board.

(4) A person practicing nursing during the time following the date his license has expired is an illegal practitioner and is subject to the penalties provided for violations of this chapter.

(5) The board may establish a reasonable late fee for licensees who fail to renew their license by January 1 as required in subsection (1).

History: En. Sec. 16, Ch. 243, L. 1953; amd. Sec. 3, Ch. 195, L. 1963; amd. Sec. 123, Ch. 350, L. 1974; amd. Sec. 3, Ch. 215, L. 1975; R.C.M. 1947, 66-1236; amd. Sec. 16, Ch. 248, L. 1981; amd. Sec. 21, Ch. 345, L. 1981; amd. Sec. 1, Ch. 277, L. 1983.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-8-432. Deposit of fees. Fees and fines collected by the department under this chapter, except those collected by a justice's court, shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 17, Ch. 243, L. 1953; amd. Sec. 118, Ch. 147, L. 1963; amd. Sec. 124, Ch. 350, L. 1974; R.C.M. 1947, 66-1237; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 24, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

37-8-433 through 37-8-440 reserved.

37-8-441. Denial, revocation, or suspension of license — grounds. Only after compliance with 37-8-442, the board may deny, revoke, or suspend a license to practice nursing or discipline a licensee on proof that the person:

(1) is guilty of fraud or deceit in procuring or attempting to procure a license to practice nursing;

(2) is unfit or incompetent by reason of negligence, habit, or other causes;

(3) is habitually intemperate or is addicted to the use of habit-forming drugs;

(4) is mentally or physically incompetent;

(5) is guilty of unprofessional conduct as defined by rules of the board;

(6) has willfully or repeatedly violated this chapter.

History: En. Sec. 20, Ch. 243, L. 1953; amd. Sec. 127, Ch. 350, L. 1974; R.C.M. 1947, 66-1240; amd. Sec. 17, Ch. 248, L. 1981; amd. Sec. 3, Ch. 282, L. 1987.

Cross-References

Kinds of fraud, 28-2-404.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

37-8-442. Denial, revocation, or suspension of license — procedure. (1) Upon receipt of a written complaint charging a person with violation of 37-8-441 as a ground for disciplinary action or on other information that a licensee may be in violation of 37-8-441, the board shall investigate, and if it finds reasonable cause to believe that a violation has occurred, it shall initiate proceedings under the Montana Administrative Procedure Act.

(2) If the person charged is found guilty of the charges, the board may refuse to grant a license to the applicant or may revoke or suspend a license issued to a licensee.

(3) A revoked or suspended license may be reissued after 1 year, in the discretion of the board.

History: En. Sec. 21, Ch. 243, L. 1953; amd. Sec. 128, Ch. 350, L. 1974; R.C.M. 1947, 66-1241; amd. Sec. 18, Ch. 248, L. 1981; amd. Sec. 4, Ch. 282, L. 1987.

Cross-References

Oath defined, 1-1-201.

Oaths, Title 1, ch. 6.

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.
Affidavits, Title 26, ch. 1, part 10.
Perjury, 45-7-201.
False swearing, 45-7-202.

37-8-443. Violation of chapter — penalties. (1) It is a misdemeanor for a person (including a corporation, association, or individual) to:

(a) sell or fraudulently obtain or furnish any nursing diploma, license, or record or aid or abet therein;

(b) practice nursing as defined by this chapter under cover of any diploma, license, or record illegally or fraudulently obtained or signed or issued unlawfully or under fraudulent representation;

(c) practice professional nursing unless duly licensed to do so;

(d) practice practical nursing unless duly licensed to do so;

(e) use in connection with the person's name any designation tending to imply that the person is a registered professional nurse or a licensed practical nurse unless duly licensed to so practice;

(f) practice nursing during the time the person's license is suspended, revoked, or on inactive status;

(g) conduct a school of nursing or a course unless the school or course has been approved by the board;

(h) otherwise violate any provision of this chapter.

(2) Such misdemeanor is punishable by a fine of not less than $100 for the first offense. Each subsequent offense is punishable by a fine of $300, by imprisonment of not more than 6 months in the county jail, or by both such fine and imprisonment.

(3) The several district courts within their respective county jurisdictions may hear, try, and determine such misdemeanor and impose in full the punishment and fines prescribed. It is necessary to prove, in any prosecution for misdemeanor under this section, only a single act prohibited by law or a single holding out or an attempt. It is not necessary to prove a general course of conduct in order to constitute a violation.

History: En. Sec. 23, Ch. 243, L. 1953; amd. Sec. 8, Ch. 291, L. 1967; amd. Sec. 5, Ch. 101, L. 1977; R.C.M. 1947, 66-1243.

Cross-References

Criminal responsibility of corporations, 45-2-311.
Accountability for conduct of corporation, 45-2-312.

37-8-444. Injunctions. When it appears to the board that any person is violating any of the provisions of this chapter, the board may in its own name bring an action in a court of competent jurisdiction for an injunction against such violation, and the proper courts of this state may enjoin any person, firm, or corporation from violation of this chapter without regard to whether proceedings have been or may be instituted before the board or whether criminal proceedings have been or may be instituted.

History: En. Sec. 24, Ch. 243, L. 1953; R.C.M. 1947, 66-1244.

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.
Contempts, Title 3, ch. 1, part 5.
Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.
Affidavits, Title 26, ch. 1, part 10.
Disciplinary authority of boards — injunctions, 37-1-136.

CHAPTER 9

NURSING HOME ADMINISTRATORS

Part 1 — General

37-9-101. Definitions.

Part 2 — Board of Nursing Home Administrators

37-9-201. Organization and compensation of board.
37-9-202. Exclusive jurisdiction of board.
37-9-203. Duties of board.

Part 3 — Licensing

37-9-301. Qualifications for licensure — examination.
37-9-302. Department to license pursuant to board rules — nontransferability — temporary permit.
37-9-303. Admission of licensees from other states.
37-9-304. Fees.
37-9-305. Renewal of registration and license.
37-9-306. Deposit of fees.
37-9-307 through 37-9-310 reserved.
37-9-311. Revocation and suspension.
37-9-312. Violation.

Chapter Cross-References

Medical services and boarding homes for the aged, Title 7, ch. 34.

Hospitals and related facilities, Title 50, ch. 5.

Adult Foster Family Care Act, Title 53, ch. 5, part 3.

Community-based nursing homes — center for the aged, Title 53, ch. 21, part 4.

Part 1

General

Part Cross-References

Duty of nursing home administrator to report violation of Montana Elder Abuse Prevention Act, 53-5-511.

37-9-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of nursing home administrators provided for in 2-15-1845.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Nursing home administrator" means a person who administers, manages, supervises, or is in general administrative charge of a long-term care facility, whether the individual has an ownership interest in the facility and whether his functions and duties are shared with one or more individuals.

(4) "Long-term care facility" means any skilled nursing facility, nursing home, or intermediate care facility as defined for licensing purposes under state law or the rules for long-term care facilities of the department of health and environmental sciences, whether proprietary or nonprofit, including facilities owned or administered by the state or a political subdivision.

(5) "Inactive nursing home administrator" means an individual who has been licensed in this state as a nursing home administrator and whose license has not been revoked or suspended but who is not actively engaged in nursing home administration.

History: **En. Sec. 1, Ch. 363, L. 1969; amd. Sec. 1, Ch. 483, L. 1973; amd. Sec. 305, Ch. 350, L. 1974; R.C.M. 1947, 66-3101; amd. Sec. 3, Ch. 274, L. 1981.**

Part 2

Board of Nursing Home Administrators

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1845.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-9-201. Organization and compensation of board. (1) The board shall elect from its membership a chairman, vice-chairman, and secretary-treasurer and shall adopt rules to govern its proceedings.

(2) Each board member shall receive compensation and travel expenses as provided for in 37-1-133.

History: **En. Sec. 7, Ch. 363, L. 1969; amd. Sec. 45, Ch. 439, L. 1975; R.C.M. 1947, 66-3107; amd. Sec. 14, Ch. 474, L. 1981.**

37-9-202. Exclusive jurisdiction of board. The board shall have exclusive authority to determine the qualifications, skill, and fitness of any person to serve as an administrator of a nursing home under the provisions of this chapter, and the holder of a license under the provisions of this chapter shall be deemed qualified to serve as the administrator of a nursing home for all purposes.

History: **En. Sec. 8, Ch. 363, L. 1969; R.C.M. 1947, 66-3108.**

37-9-203. Duties of board. The board shall:

(1) develop, impose, and enforce standards which must be met by individuals in order to register and receive a license as a nursing home administrator, designed to ensure that nursing home administrators are individuals of good character and otherwise suitable and, by training or experience in the field of institutional administration, are qualified to serve as nursing home administrators;

(2) develop and apply appropriate techniques, including examination and investigation, for determining whether individuals meet the standards;

(3) authorize the department to register and issue licenses to individuals, after application of the techniques, determined to meet the standards;

(4) establish and implement procedures designed to ensure that individuals registered and licensed as nursing home administrators will, during the period that they serve, comply with the requirements of the standards;

(5) conduct a continuing study and investigation of nursing home administrators within the state with a view to the improvement of the standards imposed for the licensing of administrators and of procedures and methods for the enforcement of the standards with respect to nursing home administrators;

(6) conduct or cause to be conducted one or more courses of instruction and training sufficient to meet the requirements of this chapter and make provisions for the conduct of these courses and their accessibility to residents of this state, unless it finds that there are a sufficient number of courses conducted by others within this state to meet the needs of the state; instead, the board may approve courses conducted within and outside of this state sufficient to meet the education and training requirements of this chapter;

(7) prescribe or approve continuing education courses.

History: En. Sec. 9, Ch. 363, L. 1969; amd. Sec. 6, Ch. 483, L. 1973; amd. Sec. 310, Ch. 350, L. 1974; R.C.M. 1947, 66-3109(part).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Allocation for administrative purposes only, 2-15-121.

Quasi-judicial boards, 2-15-124.

Duties of boards, 37-1-131.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-9-301. Qualifications for licensure — examination. (1) The department shall register and issue licenses to qualified persons as nursing home administrators, and the board shall establish qualification criteria for nursing home administrators. No registration or license shall be issued to a person as a nursing home administrator unless he:

(a) is of good character, of sound physical and mental health, has received a high school diploma or its equivalent; and

(b) (i) has satisfactorily completed a course of instruction and training prescribed by the board, which shall be designed and administered to present sufficient knowledge of the needs properly served by long-term care facilities, laws governing the operation of long-term care facilities and the protection of the interests of patients, and the elements of good nursing home administration; or

(ii) has presented evidence satisfactory to the board of sufficient education, training, or experience, or a combination of education, training, and experience, in the fields referred to in subsection (1)(b)(i) to administer, supervise, and manage a long-term care facility; and

(c) has passed an examination designed to test for competence in the subject matters referred to in subsection (1)(b)(i).

(2) The minimum standards for qualification shall comply with the requirements, if any, set forth in Title XIX of the Social Security Act (P.L. 90-248, 1967), as amended.

History: En. Sec. 3, Ch. 363, L. 1969; amd. Sec. 10, Ch. 168, L. 1971; amd. Sec. 3, Ch. 483, L. 1973; amd. Sec. 307, Ch. 350, L. 1974; R.C.M. 1947, 66-3103; amd. Sec. 1, Ch. 464, L. 1989.

Compiler's Comments

1989 Amendment: In (1)(b)(ii), after "or experience", inserted "or a combination of education, training, and experience"; corrected internal reference; and made minor changes in phraseology and punctuation.

Grandfather Clause — Education Requirements Waived for License Renewals: Section 2, Ch. 464, L. 1989, provided: "A person licensed as a nursing home administrator on [the effective date of this act] does not have to present evidence satisfactory to the board of sufficient education as required by 37-9-301(1)(b)(ii) in order to renew his license as a nursing home administrator." Effective October 1, 1989.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-9-302. Department to license pursuant to board rules — nontransferability — temporary permit. (1) The department shall register and license nursing home administrators under the rules adopted by the board.

(2) A nursing home administrator's registration and license is not transferable and is valid until surrendered for cancellation, suspended, or revoked for violation of this chapter or any other laws or rules relating to the proper administration and management of a long-term care facility.

(3) If the board determines that preliminary qualifications set forth in 37-9-301 will have been met before the next examination, it may authorize the department to issue a temporary permit for a period of 180 days or until the scores of the next examination are announced. No temporary permit may be issued to an applicant after the date of the first examination for which he is eligible.

History: En. Sec. 4, Ch. 363, L. 1969; amd. Sec. 4, Ch. 483, L. 1973; amd. Sec. 308, Ch. 350, L. 1974; R.C.M. 1947, 66-3104(part).

37-9-303. Admission of licensees from other states. The department may issue, at the board's discretion, a nursing home administrator's license without examination to a person who holds a current license as a nursing home administrator from another jurisdiction if the board finds that the standards for licensure in the other jurisdiction are at least substantially equivalent to those prevailing in this state and that the applicant is otherwise qualified.

History: En. Sec. 11, Ch. 363, L. 1969; amd. Sec. 311, Ch. 350, L. 1974; R.C.M. 1947, 66-3111.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-9-304. Fees. (1) Each person who applies for licensure, whether by waiver, examination, or reciprocation, shall pay a fee prescribed by the board at the time of application.

(2) Each person licensed as a nursing home administrator shall pay a license fee in an amount fixed by the board. A license shall expire each year on a date set by rule of the department and shall be renewable annually upon timely payment of the license fee.

(3) Each person registered as an inactive nursing home administrator shall be required to pay a registration fee in the amount fixed by the board. An inactive registration shall expire each year on a date established by rule of the department and shall be renewable annually upon timely payment of the inactive registration fee.

(4) The fee for issuing a duplicate license shall be fixed by the board.

History: En. Sec. 5, Ch. 363, L. 1969; amd. Sec. 5, Ch. 483, L. 1973; R.C.M. 1947, 66-3105; amd. Sec. 22, Ch. 345, L. 1981; amd. Sec. 2, Ch. 390, L. 1983.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-9-305. Renewal of registration and license. Every holder of a nursing home administrator's registration and license shall renew it annually by payment of the required fee for the next subsequent year prior to the expiration date of his currently valid registration and license. Renewals of registrations or licenses shall be granted as a matter of course, providing the holder has completed a continuing education course prescribed or approved by the board; however, if the board finds, after due notice and hearing, that the applicant has acted or failed to act in such a manner or under circumstances as would constitute grounds for suspension or revocation of a registration and license, it shall not issue the renewal.

History: En. Sec. 10, Ch. 363, L. 1969; amd. Sec. 7, Ch. 483, L. 1973; R.C.M. 1947, 66-3110; amd. Sec. 3, Ch. 390, L. 1983.

Cross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Suspension of license fees for persons in military service, 10-1-605.

37-9-306. Deposit of fees. Fees collected by the department under this chapter shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6). This fund may be used to pay the compensation and expenses of members of the board and other expenses necessary to administer this chapter.

History: En. Sec. 6, Ch. 363, L. 1969; amd. Sec. 309, Ch. 350, L. 1974; R.C.M. 1947, 66-3106; amd. Sec. 1, Ch. 277, L. 1983.

37-9-307 through 37-9-310 reserved.

37-9-311. Revocation and suspension. (1) The board shall, on receipt of a written and signed complaint, initiate an investigation of the matter contained in the complaint, subject to 37-1-101 and 37-1-121. At its next meeting, the complaint shall be presented to the board, together with the report of investigation and recommendations, and on this basis the board shall determine whether to bring charges and provide for a hearing.

(2) The board shall, for cause, after notice and hearing, revoke or suspend licenses previously issued if the individual holding the license is determined substantially to have failed to conform to the requirements of the standards set pursuant to 37-9-203(1). The board may in its discretion defer execution of its order of revocation or suspension for the purpose of permitting continuity of care for patients when the need for this continuity of care outweighs any harm or danger which might result from the failure of the nursing home administrator to be registered and licensed resulting in the closure of a long-term care facility.

(3) Denial of issuance or renewal, suspension, or revocation under this chapter is subject to review by the board on the timely written request for review within 30 days.

History: (1), (2)En. Sec. 9, Ch. 363, L. 1969; amd. Sec. 6, Ch. 483, L. 1973; amd. Sec. 310, Ch. 350, L. 1974; Sec. 66-3109, R.C.M. 1947; (3)En. Sec. 4, Ch. 363, L. 1969; amd. Sec. 4, Ch.

483, L. 1973; amd. Sec. 308, Ch. 350, L. 1974; Sec. 66-3104, R.C.M. 1947; R.C.M. 1947, 66-3104(part), 66-3109(part).

Cross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-9-312. Violation. It shall be unlawful for any person to act or serve in the capacity of a nursing home administrator unless he is the holder of a registration and license as a nursing home administrator, issued in accordance with the provisions of this chapter. A person who violates the provisions of this chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $500 or by imprisonment for not more than 6 months or by both such fine and imprisonment.

History: En. Sec. 12, Ch. 363, L. 1969; amd. Sec. 8, Ch. 483, L. 1973; R.C.M. 1947, 66-3112.

CHAPTER 10

OPTOMETRY

Part 1 — General

37-10-101. Definitions — practice of optometry.
37-10-102. Exemptions.
37-10-103. Use of drugs not prohibited by pharmacy law.
37-10-104. Public agencies — discrimination prohibited.

Part 2 — Board of Optometrists

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37-10-202. Rulemaking power — seal.
37-10-203. Compensation of members — expenses — deposit of moneys.
37-10-204. Optometric oversight committee — members — duty to investigate complaints.

Part 3 — Licensing

37-10-301. Certificate required for practice — unlawful acts — injunction.
37-10-302. Examination — qualifications — application — issuance of certificate.
37-10-303. Reciprocity.
37-10-304. Course in use of diagnostic and therapeutic drugs required.
37-10-305. Repealed.
37-10-306. Certificate to be displayed in office.
37-10-307. Annual renewal — fee.
37-10-308. Continuing education required for license renewal.
37-10-309 and 37-10-310 reserved.
37-10-311. Revocation — unprofessional conduct.
37-10-312. Duty of county attorneys and attorney general.
37-10-313. Penalty for violations — deposit of fines.

Chapter Cross-References

Professional service corporations, Title 35, ch. 4.

Optometrist to report child abuse, 41-3-201.

Part 1

General

Part Cross-References

Duty of optometrist to report violation of Montana Elder Abuse Prevention Act, 53-5-511.

37-10-101. Definitions — practice of optometry. (1) The practice of optometry is the profession constituting the art and science of visual care and is hereby defined to be any one of the following acts:

(a) the optometric examination or optometric diagnosis of all of those physiological or anatomical parts or functions which consummate the process of human vision to ascertain the presence therein of abnormal conditions or functions which may be optometrically diagnosed, corrected, remedied, or relieved;

(b) the employment of any optometric means, excluding the use of surgery, for the purpose of detecting any condition of the process of vision which may have any significance in a complete optometric eye and vision examination, including the employment and administration of drugs topically applied for examination purposes, limited to cycloplegics, mydriatics, topical anesthetics, dyes such as fluorescein, and for emergency use only, miotics;

(c) the application or prescription of ophthalmic lenses, contact lenses, prisms, orthoptics, visual training, any physical, mechanical, or physiological therapy, and the furnishing or application of any prosthetic or therapeutic devices for the correction or relief of visual anomalies, excluding surgery;

(d) the administration, dispensation, and prescription of the oral analgesics codeine, propoxyphene, hydrocodone, and dihydrocodeine, alone or in combination with nonscheduled or nonregulated drugs; and

(e) the administration, dispensation, and prescription of those topical drugs, not including corticosteroids, approved by the board for use in ocular treatment limited to the anterior segment of the eye and adnexa. Glaucoma may not be treated.

(2) Nothing in subsection (1) prohibits an optometrist from removing from the eye or adnexa a foreign body that is not intraocular.

(3) Unless the context requires otherwise, in this chapter:

(a) "board" means the board of optometrists provided for in 2-15-1846; and

(b) "department" means the department of commerce provided for in Title 2, chapter 15, part 18.

History: (1), (2)En. Ch. 138, L. 1907; Sec. 1607, Rev. C. 1907; re-en. Sec. 3155, R.C.M. 1921; re-en. Sec. 3155, R.C.M. 1935; amd. Sec. 1, Ch. 252, L. 1959; amd. Sec. 1, Ch. 361, L. 1977; Sec. 66-1301, R.C.M. 1947; (3)En. 66-1301.1 by Sec. 129, Ch. 350, L. 1974; Sec. 66-1301.1, R.C.M. 1947; R.C.M. 1947, 66-1301, 66-1301.1; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 2, Ch. 588, L. 1987.

Cross-References

Exemption from physician's licensing requirement, 37-3-103.

37-10-102. Exemptions. Nothing in this chapter shall be construed to apply to:

(1) physicians and surgeons authorized to practice under the laws of the state of Montana;

(2) a person employed in the office of and acting under the direct personal supervision of a physician or surgeon;

(3) an optician performing the required mechanical work under an order or prescription signed by a duly licensed physician, surgeon, or optometrist;

(4) commissioned officers of the armed forces of the United States performing functions of this chapter in the line of their regular duty; or

(5) persons who sell spectacles or eyeglasses without attempting to traffic upon assumed skill in adapting them to the eye.

History: **Ap. p. Ch. 138, L. 1907; Sec. 1621, Rev. C. 1907; re-en. Sec. 3169, R.C.M. 1921; re-en. Sec. 3169, R.C.M. 1935; amd. Sec. 6, Ch. 252, L. 1959; amd. Sec. 1, Ch. 512, L. 1977; Sec. 66-1316, R.C.M. 1947; Ap. p. Ch. 138, L. 1907; Sec. 1608, Rev. C. 1907; re-en. Sec. 3156, R.C.M. 1921; amd. Sec. 1, Ch. 171, L. 1925; re-en. Sec. 3156, R.C.M. 1935; amd. Sec. 1, Ch. 130, L. 1939; amd. Sec. 2, Ch. 252, L. 1959; amd. Sec. 1, Ch. 88, L. 1967; amd. Sec. 130, Ch. 350, L. 1974; Sec. 66-1302, R.C.M. 1947; R.C.M. 1947, 66-1302(part), 66-1316.**

37-10-103. Use of drugs not prohibited by pharmacy law. The use of drugs by a licensed optometrist as stated in 37-10-101 is not prohibited by Title 37, chapter 7.

History: **En. 66-1301.2 by Sec. 2, Ch. 361, L. 1977; R.C.M. 1947, 66-1301.2; amd. Sec. 3, Ch. 588, L. 1987.**

37-10-104. Public agencies — discrimination prohibited. All agencies of the state and its subdivisions administering relief, public assistance, public welfare assistance, social security health insurance, or other health service under the laws of this state shall accept the services of licensed optometrists for any service covered by their licenses rendered to any person receiving benefits from said agents or bodies and shall pay for such services in the same manner as other ocular practitioners rendering similar services. None of the governmental agencies or agents, officials, or employees thereof, including the public schools, shall, in the performance of their duties, discriminate in any way among licensed ocular practitioners.

History: **En. 66-1317 by Sec. 7, Ch. 252, L. 1959; R.C.M. 1947, 66-1317.**

Cross-References

Illegal discrimination, Title 49, ch. 2.

Governmental Code of Fair Practices, Title 49, ch. 3.

Part 2

Board of Optometrists

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1846.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-10-201. Organization — meetings. The board shall annually choose from its members a president and secretary, both of whom may administer oaths and take affidavits. The board shall meet at least once each year, at Helena or some other place designated by the president, on the fourth Monday of July and, in addition, whenever and wherever the president and secretary call a meeting. The department shall keep a record of the proceedings of the board, which shall be open to public inspection.

History: **En. Ch. 138, L. 1907; Sec. 1610, Rev. C. 1907; re-en. Sec. 3158, R.C.M. 1921; amd. Sec. 3, Ch. 171, L. 1925; amd. Sec. 1, Ch. 44, L. 1927; re-en. Sec. 3158, R.C.M. 1935; amd. Sec. 132, Ch. 350, L. 1974; R.C.M. 1947, 66-1304.**

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Duty of Department to provide facilities, 37-1-101.

Disrupting meeting as disorderly conduct, 45-8-101.

37-10-202. Rulemaking power — seal. (1) The board may adopt rules for the regulation, conduct, supervision, and procedure governing all applicants for certificates of registration as optometrists and the practice of optometry not inconsistent with the provisions of this chapter.

(2) The board shall have a common seal.

History: En. Ch. 138, L. 1907; Sec. 1609, Rev. C. 1907; re-en. Sec. 3157, R.C.M. 1921; amd. Sec. 2, Ch. 171, L. 1925; re-en. Sec. 3157, R.C.M. 1935; amd. Sec. 2, Ch. 130, L. 1939; amd. Sec. 131, Ch. 350, L. 1974; R.C.M. 1947, 66-1303.

Cross-References

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Allocation for administrative purposes only, 2-15-121.

Quasi-judicial boards, 2-15-124.

Duties of boards, 37-1-131.

37-10-203. Compensation of members — expenses — deposit of moneys. (1) Each member of the board is entitled to receive compensation and travel expenses as provided for in 37-1-133.

(2) Money collected by the department shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Ch. 138, L. 1907; Sec. 1617, Rev. C. 1907; re-en. Sec. 3165, R.C.M. 1921; amd. Sec. 5, Ch. 171, L. 1925; re-en. Sec. 3165, R.C.M. 1935; amd. Sec. 5, Ch. 252, L. 1959; amd. Sec. 121, Ch. 147, L. 1963; amd. Sec. 23, Ch. 93, L. 1969; amd. Sec. 136, Ch. 350, L. 1974; amd. Sec. 32, Ch. 439, L. 1975; R.C.M. 1947, 66-1311; amd. Sec. 15, Ch. 474, L. 1981; amd. Sec. 1, Ch. 277, L. 1983.

37-10-204. Optometric oversight committee — members — duty to investigate complaints. (1) (a) There is an optometric oversight committee composed of five members. The members are:

(i) two physicians, one of whom must be an ophthalmologist and the other a member of the board of medical examiners, who are appointed by the board of medical examiners;

(ii) two optometrists who are members of the board of optometrists and who are appointed by the board of optometrists; and

(iii) one pharmacist who is a member of the board of pharmacy and who is appointed by the board of pharmacy.

(b) The members of the committee shall elect a chairman from their members. Members of the committee are entitled to compensation and travel expenses as provided for in 37-1-133. Members' compensation and travel expenses and committee clerical and administrative expenses must be paid by the board of optometrists from funds appropriated to the board for its ordinary operations.

(2) A meeting of the committee must be called by any of the represented boards upon receipt of a signed written complaint regarding the diagnosis, treatment, or management of ocular disease as it relates to therapeutic drug usage by an optometrist.

(3) Each of the represented boards shall, upon receipt of a complaint concerning the diagnosis, treatment, or management of ocular disease by an

optometrist, forward a copy of the complaint to the members of the committee. Each member of the committee shall, subject to applicable confidentiality requirements, have access to all records related to therapeutic drug usage of the board of optometrists concerning the optometrist against whom a complaint has been filed.

(4) The committee may investigate any complaint that it believes has a valid basis. The investigation may include:

(a) requiring the complainant, if injuries have been alleged, to submit to a physical examination;

(b) examination of hospital and other medical records;

(c) interviews of the complainant and the accused optometrist; and

(d) other avenues of inquiry tending to prove or disprove the complaint but that do not raise the formality of the investigation to the level of a contested case administrative hearing.

(5) Based on the findings of its investigation, the committee may:

(a) recommend to the board of optometrists that no further action be taken regarding the complaint;

(b) recommend to the board of optometrists that no action be taken against the subject optometrist, but that the board should review its rules and statutory provisions relating to the administration of prescription drugs by optometrists to amend the rules or propose legislation to prevent similar occurrences; or

(c) recommend that the board of optometrists initiate disciplinary proceedings.

(6) If the committee recommends that the board of optometrists initiate disciplinary proceedings, the board must take necessary action to begin disciplinary proceedings.

(7) (a) A copy of the committee's decision must be mailed to the complainant.

(b) If the committee makes a decision under subsection (5)(b) or (5)(c), the board of optometrists shall respond to the committee's decision in writing. The response must be addressed to the board of medical examiners and the board of pharmacy.

History: En. Sec. 6, Ch. 588, L. 1987.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-10-301. Certificate required for practice — unlawful acts — injunction. (1) It is unlawful for a person to:

(a) practice optometry in this state unless he has first obtained a certificate of registration;

(b) sell, barter, or offer to sell or barter a certificate of registration issued by the department;

(c) purchase or procure by barter a certificate of registration with intent to use it as evidence of the holder's qualification to practice optometry;

(d) materially alter with fraudulent intent a certificate of registration;

(e) use or attempt to use a certificate of registration which has been purchased, fraudulently issued, counterfeited, or materially altered as a valid certificate of registration;

(f) practice optometry under a false or assumed name;

(g) willfully make a materially false statement in an application for an examination by the department or for a certificate of registration;

(h) advertise by displaying a sign or by otherwise holding himself out to be an optometrist without having at the time a valid certificate of registration;

(i) replace or duplicate ophthalmic lenses with or without a prescription or to dispense ophthalmic lenses from prescriptions without having at the time a valid certificate of registration as an optometrist; however, this subsection does not prevent an optical mechanic from:

(i) doing the merely mechanical work on an ophthalmic lens which is ordered on a prescription signed by a registered optometrist and is dispensed only by the optometrist or a person employed by the optometrist and who does so in the office of and under the direct personal supervision of an optometrist; or

(ii) replacing or duplicating an existing lens for glasses;

(j) take or make measurements for the purpose of fitting or adapting ophthalmic lenses to the human eye without having at the time a valid certificate of registration. A person who takes or makes measurements or uses mechanical devices for this purpose or who, in the sale of spectacles, eyeglasses, or lenses, uses in the testing of the eyes lenses other than the lenses actually sold is practicing optometry. However, this section does not apply to the prescriptions of qualified optometrists when sent to a recognized optical laboratory.

(k) measure, fit, or adapt a lens to direct, contiguous contact to the human eyeball without having at the time a valid certificate of registration as an optometrist.

(2) When the board has reasonable cause to believe that a person is violating this section or a rule issued under this chapter, it may, in addition to other remedies provided in this chapter, bring an action for injunctive relief in district court in the county where the violation occurs to enjoin the person from engaging in or continuing the violation. The department may employ legal counsel to prosecute these actions. In these actions and on notice and hearing, an order or judgment may be entered awarding a temporary restraining order or final injunction as considered proper by the judge of the district court in the county where the violation occurred.

History: En. Ch. 138, L. 1907; Sec. 1608, Rev. C. 1907; re-en. Sec. 3156, R.C.M. 1921; amd. Sec. 1, Ch. 171, L. 1925; re-en. Sec. 3156, R.C.M. 1935; amd. Sec. 1, Ch. 130, L. 1939; amd. Sec. 2, Ch. 252, L. 1959; amd. Sec. 1, Ch. 88, L. 1967; amd. Sec. 130, Ch. 350, L. 1974; R.C.M. 1947, 66-1302(part); amd. Sec. 3, Ch. 66, L. 1981; amd. Sec. 4, Ch. 543, L. 1981.

Cross-References

"Willfully" defined, 1-1-204.

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Reporting disciplinary actions against licensees, 37-1-105.
Licensing investigation and review — record access, 37-1-135.
Disciplinary authority of boards — injunctions, 37-1-136.

37-10-302. Examination — qualifications — application — issuance of certificate. (1) The board shall adopt rules relative to and governing the qualifications of applicants for certificates of registration as optometrists. If the applicant does not meet the requirements of the rules, he is not eligible to take an examination to practice optometry in this state. If the applicant meets the requirements of the rules, he must pass an examination given by the department, subject to 37-1-101. Examinations shall be practical in character and designed to ascertain the applicant's fitness to practice the profession of optometry and shall be conducted in the English language. The department shall publish and distribute the examination requirements for a certificate to practice optometry in this state. The board may accept the grades an applicant has received in the written examinations given by the national board of examiners in optometry.

(2) No person is eligible to take the examination unless he is 18 years of age or older and of good moral character.

(3) No person is eligible to take the examination unless he has certificates of graduation from an accredited high school and from a school of optometry in which the practice and science of optometry is taught in a course of study covering 8 semesters or 4 years of actual attendance and which is accredited by the international association of boards of examiners in optometry. Instead of the certificates of graduation, an applicant for examination may, with like effect, furnish an affidavit that he has practiced optometry exclusively for a period of at least 6 years in some other state or states.

(4) A person desiring to be examined in optometry shall file an application, in the manner prescribed by the board, at least 4 weeks before the examination is held, and a fee prescribed by the board shall accompany the application.

(5) A person successfully passing the examination shall be registered in a register which shall be kept by the department, and on the payment of a fee prescribed by the board shall receive a certificate of registration signed by the members of the board.

History: En. Ch. 138, L. 1907; Sec. 1611, Rev. C. 1907; amd. Sec. 1, Ch. 128, L. 1917; re-en. Sec. 3159, R.C.M. 1921; amd. Sec. 4, Ch. 171, L. 1925; re-en. Sec. 3159, R.C.M. 1935; amd. Sec. 3, Ch. 130, L. 1939; amd. Sec. 3, Ch. 252, L. 1959; amd. Sec. 24, Ch. 94, L. 1973; amd. Sec. 133, Ch. 350, L. 1974; R.C.M. 1947, 66-1305(1) thru (5); amd. Sec. 3, Ch. 241, L. 1981; amd. Sec. 23, Ch. 345, L. 1981.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.
Duty of Department to grade examinations, 37-1-101.
Standardized forms, 37-1-104.
Licensing boards to establish fees commensurate with costs, 37-1-134.
Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-10-303. Reciprocity. If an applicant for a certificate of registration has been admitted to practice optometry in another state and has attained an average of 75% in his examination in the other state, he may, at the discretion of the board, be granted a certificate to practice his profession in this state without examination, on payment of all fees, if the state from which the applicant comes offers equal privileges to applicants for certificates of registration from this state.

History: **En. Ch. 138, L. 1907; Sec. 1611, Rev. C. 1907; amd. Sec. 1, Ch. 128, L. 1917; re-en. Sec. 3159, R.C.M. 1921; amd. Sec. 4, Ch. 171, L. 1925; re-en. Sec. 3159, R.C.M. 1935; amd. Sec. 3, Ch. 130, L. 1939; amd. Sec. 3, Ch. 252, L. 1959; amd. Sec. 24, Ch. 94, L. 1973; amd. Sec. 133, Ch. 350, L. 1974; R.C.M. 1947, 66-1305(6).**

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-10-304. Course in use of diagnostic and therapeutic drugs required. (1) (a) In addition to the requirements of 37-10-302 or 37-10-303, whichever is applicable, each person desiring to commence the practice of optometry shall satisfactorily complete a course prescribed by the board of medical examiners with consultation and approval by the board of optometrists with particular emphasis on the topical application of diagnostic agents to the eye for the purpose of examination of the human eye and the analysis of ocular functions.

(b) A person presently licensed to practice optometry who wishes to employ diagnostic agents must satisfactorily complete a course referred to in subsection (1)(a) and must pass an examination as provided in subsection (1)(d).

(c) The course referred to in subsection (1)(a) must be conducted by an institution accredited by a regional or professional accreditation organization which is recognized or approved by the national commission on accrediting or the United States commissioner of education. The course must also be approved by the board.

(d) The board shall provide for an examination in competency in the use of diagnostic drugs and shall issue a certificate to those applicants who pass such examination.

(2) (a) In addition to the requirements of 37-10-302 or 37-10-303, whichever is applicable, each person desiring to commence the practice of optometry shall:

(i) pass an examination, of the international association of boards of examiners in optometry, on the diagnosis, treatment, and management of ocular disease; or

(ii) take a course and pass an examination in the diagnosis, treatment, and management of ocular diseases. The course and examination must be conducted by an institution accredited by a regional or professional accreditation organization which is recognized or approved by the national commission on accrediting or the United States commissioner of education. The course and examination must also be approved by the board.

(b) A person presently licensed to practice optometry who wishes to employ therapeutic pharmaceutical agents must meet the requirements of subsection (2)(a).

(c) The board shall:

(i) provide for an examination in competency in the diagnosis, treatment, and management of therapeutic pharmaceutical agents; and

(ii) issue a certificate to an applicant who passes such examination.

History: **En. 66-1305.1 by Sec. 3, Ch. 361, L. 1977; R.C.M. 1947, 66-1305.1; amd. Sec. 4, Ch. 588, L. 1987.**

Cross-References

Dispensing of drugs by health care practitioners, Title 37, ch. 2, part 1.

Board of Medical Examiners, Title 37, ch. 3, part 2.

Dangerous drugs, Title 45, ch. 9.

37-10-305. Repealed. Sec. 4, Ch. 66, L. 1981.

History: En. Ch. 138, L. 1907; Sec. 1614, Rev. C. 1907; re-en. Sec. 3162, R.C.M. 1921; re-en. Sec. 3162, R.C.M. 1935; amd. Sec. 4, Ch. 130, L. 1939; amd. Sec. 135, Ch. 350, L. 1974; R.C.M. 1947, 66-1308.

37-10-306. Certificate to be displayed in office. Every person to whom a certificate of examination or registration is granted shall display the same in a conspicuous part of his office wherein the practice of optometry is conducted.

History: En. Ch. 138, L. 1907; Sec. 1616, Rev. C. 1907; re-en. Sec. 3164, R.C.M. 1921; re-en. Sec. 3164, R.C.M. 1935; R.C.M. 1947, 66-1310.

37-10-307. Annual renewal — fee. A registered optometrist who desires to continue the practice of optometry in this state shall, before the license expiration date established by rule of the department, annually pay to the department a renewal fee prescribed by the board in return for which a renewal of registration shall be issued. If a person fails or neglects to procure his annual renewal of registration, his certificate of registration shall be revoked by the board; however, no certificate of registration may be revoked without 90 days' notice having been given to the delinquent, who within this period may renew his certificate of registration on the payment of the renewal fee with a penalty prescribed by the board.

History: En. Ch. 138, L. 1907; Sec. 1613, Rev. C. 1907; amd. Sec. 2, Ch. 128, L. 1917; re-en. Sec. 3161, R.C.M. 1921; amd. Sec. 4 ½, Ch. 171, L. 1925; re-en. Sec. 3161, R.C.M. 1935; amd. Sec. 4, Ch. 252, L. 1959; amd. Sec. 120, Ch. 147, L. 1963; amd. Sec. 1, Ch. 75, L. 1971; amd. Sec. 134, Ch. 350, L. 1974; R.C.M. 1947, 66-1307; amd. Sec. 24, Ch. 345, L. 1981; amd. Sec. 4, Ch. 390, L. 1983.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-10-308. Continuing education required for license renewal. A licensed optometrist in active practice in this state is required to attend not less than 12 hours annually of scientific clinics, forums, or optometric educational studies as may be provided or approved by the board as a prerequisite for his license renewal. A copy of this section shall be sent to each licensee by the department prior to the license renewal date each year. The board may exempt from this requirement those licensees who submit satisfactory proof that they were prevented from attending educational programs during the preceding year due to illness or for other good reason.

History: En. 66-1318 by Sec. 1, Ch. 79, L. 1971; amd. Sec. 139, Ch. 350, L. 1974; R.C.M. 1947, 66-1318.

37-10-309 and 37-10-310 reserved.

37-10-311. Revocation — unprofessional conduct. (1) The board may revoke a certificate of registration for:

(a) physical or mental incompetence;

(b) gross malpractice or repeated malpractice;

(c) a violation of any of the provisions of this chapter or rules or orders of the board; or

(d) unprofessional conduct.

(2) Unprofessional conduct includes:

(a) obtaining a fee by fraud or misrepresentation;

(b) employing, directly or indirectly, a suspended or unlicensed optometrist to perform work covered by this chapter;

(c) directly or indirectly accepting employment to practice optometry from a person not having a valid certificate of registration as an optometrist or accepting employment to practice optometry for or from a company or corporation;

(d) permitting another to use his certificate of registration;

(e) soliciting or sending a solicitor from house to house;

(f) treatment or advice in which untruthful or improbable statements are made;

(g) professing to cure nonocular disease;

(h) advertising in which ambiguous or misleading statements are made; or

(i) the use in advertising of the expression "eye specialist" or "specialist on eyes" in connection with the name of an optometrist. This chapter does not prohibit legitimate or truthful advertising by a registered optometrist.

(3) Before a certificate is revoked, the holder shall be given a notice and an opportunity for a hearing.

(4) Any optometrist convicted a second time for violation of the provisions of this chapter or whose certificate of registration or examination has been revoked a second time shall not be permitted to practice optometry in this state.

History: (1) thru (3)En. Ch. 138, L. 1907; Sec. 1618, Rev. C. 1907; amd. Sec. 3, Ch. 128, L. 1917; re-en. Sec. 3166, R.C.M. 1921; amd. Sec. 6, Ch. 171, L. 1925; re-en. Sec. 3166, R.C.M. 1935; amd. Sec. 5, Ch. 130, L. 1939; amd. Sec. 137, Ch. 350, L. 1974; Sec. 66-1312, R.C.M. 1947; (4)En. Sec. 3166-A by Sec. 2, Ch. 44, L. 1927; re-en. Sec. 3166.1, R.C.M. 1935; Sec. 66-1313, R.C.M. 1947; R.C.M. 1947, 66-1312, 66-1313; amd. Sec. 5, Ch. 543, L. 1981; amd. Sec. 5, Ch. 588, L. 1987.

Cross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unethical conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duty of director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-10-312. Duty of county attorneys and attorney general. It is the duty of a county attorney of a county wherein a violation under this chapter, except 37-10-104, is alleged to have occurred to prosecute such violation in the district court in said county. The state attorney general shall appear as counsel for the board in the state supreme court.

History: En. Ch. 138, L. 1907; Sec. 1620, Rev. C. 1907; re-en. Sec. 3168, R.C.M. 1921; re-en. Sec. 3168, R.C.M. 1935; amd. Sec. 1, Ch. 204, L. 1965; R.C.M. 1947, 66-1315.

Cross-References

Duties of Attorney General, 2-15-501.

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

37-10-313. Penalty for violations — deposit of fines. A person who violates this chapter, except 37-10-104, or the rules of the board is guilty of a misdemeanor and on conviction shall be fined not less than $200 and not more than $500 or imprisoned in the county jail not exceeding 6 months or both fined and imprisoned. Fines collected, except those collected by a justice's court, shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Ch. 138, L. 1907; Sec. 1619, Rev. C. 1907; re-en. Sec. 3167, R.C.M. 1921; amd. Sec. 8, Ch. 171, L. 1925; re-en. Sec. 3167, R.C.M. 1935; amd. Sec. 6, Ch. 130, L. 1939; amd. Sec. 122, Ch. 147, L. 1963; amd. Sec. 138, Ch. 350, L. 1974; R.C.M. 1947, 66-1314; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 25, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

CHAPTER 11

PHYSICAL THERAPY

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37-11-301. Unauthorized representation as licensed therapist.
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37-11-320. Duty to report violations — immunity from liability.
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37-11-322. Penalties.

Chapter Cross-References

Professional service corporations, Title 35, ch. 4.

Part 1
General

37-11-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Physical therapy" means the evaluation, treatment, and instruction of human beings to detect, assess, prevent, correct, alleviate, and limit physical disability, bodily malfunction and pain, injury, and any bodily or mental conditions by the use of therapeutic exercise and rehabilitative procedures for the purpose of preventing, correcting, or alleviating a physical or mental disability.

(2) "Physical therapist" or "physiotherapist" means a person who practices physical therapy.

(3) "Physical therapy student" or "physical therapy intern" means an individual enrolled in an accredited physical therapy curriculum and who, as part of his professional, educational, and clinical training, is practicing in a physical therapy setting under the direction, guidance, and observation of a licensed physical therapist.

(4) "Physical therapy assistant" means a person who is a graduate of an accredited curriculum approved by the board and who assists a physical therapist in the practice of physical therapy and whose activities require an understanding of physical therapy.

(5) "Physical therapy practitioner", "physical therapy specialist", "physiotherapy practitioner", or "manual therapists" are equivalent terms, and any derivation of the above or any letters implying the above are equivalent terms; any reference to any one of them in this chapter includes the others but does not include certified corrective therapists or massage therapists.

(6) "Physical therapy aide" means a person who aids in the practice of physical therapy and whose activities require on-the-job training and supervision by a licensed physical therapist who must be available for periodic checks during any procedure or treatment involving a patient.

(7) "Board" means the board of physical therapy examiners provided for in 2-15-1858.

(8) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(9) "Hearing" means the adjudicative proceeding concerning the issuance, denial, suspension, or revocation of a license, after which the appropriate action toward an applicant or licensee is to be determined by the board.

History: En. Sec. 1, Ch. 39, L. 1961; amd. Sec. 241, Ch. 350, L. 1974; R.C.M. 1947, 66-2501(part); amd. Secs. 3, 5, Ch. 491, L. 1979; amd. Sec. 3, Ch. 274, L. 1981.

37-11-102. Exemptions. This chapter shall not be construed to limit or regulate any other business or profession or any services rendered or performed in connection therewith, including osteopathy, chiropractic, chiropractic physiotherapy, massage therapists, masseurs, or Swedish masseurs.

History: En. Sec. 13, Ch. 39, L. 1961; R.C.M. 1947, 66-2513(part).

37-11-103. Restrictions on scope of practice. Nothing in this chapter shall be construed as authorizing a physical therapist, whether licensed or not, to practice medicine, osteopathy, or chiropractic, dentistry, or podiatry; nor shall Title 37, chapter 11, be construed to limit or regulate any other business or profession or any services rendered or performed in connection with physical therapy.

History: **En. Sec. 13, Ch. 39, L. 1961; R.C.M. 1947, 66-2513(part); amd. Sec. 7, Ch. 491, L. 1979.**

Cross-References

Exemption from physician's licensing requirement, 37-3-103.

37-11-104. Physical therapy — evaluation and treatment. (1) Physical therapy evaluation includes the administration, interpretation, and evaluation of tests and measurements of bodily functions and structures; the development of a plan of treatment; consultative, educational, and other advisory services; and instruction and supervision of supportive personnel.

(2) Treatment employs, for therapeutic effects, physical measures, activities and devices, for preventive and therapeutic purposes, exercises, rehabilitative procedures, massage, mobilization, and physical agents including but not limited to mechanical devices, heat, cold, air, light, water, electricity, and sound.

(3) The evaluation and treatment procedures listed in subsections (1) and (2) may be performed by a licensed physical therapist without referral.

History: **En. Sec. 4, Ch. 491, L. 1979; amd. Sec. 1, Ch. 240, L. 1981; amd. Sec. 3, Ch. 55, L. 1987.**

37-11-105. Supervision of physical therapist assistants. A physical therapist assistant must practice under the direct supervision of a licensed physical therapist who is responsible for and participates in a patient's care.

History: **En. Sec. 6, Ch. 491, L. 1979.**

Part 2

Duties of Board and Department

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1859.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-11-201. General powers — rulemaking power — records. (1) The board may:

(a) adopt rules to carry this chapter into effect;

(b) grant, suspend, and revoke licenses;

(c) issue subpoenas requiring the attendance of witnesses or the production of books and papers; and

(d) take any other disciplinary action necessary to protect the public.

(2) The board shall:

(a) examine applicants for licenses twice a year at reasonable places and times determined by the board;

(b) review the qualifications of applicants who are approved for examination for licensure; and

(c) conduct written examinations that measure the qualifications of individual applicants along with any oral or practical examinations when determined by the board to be appropriate.

(3) The department shall keep a record of the board's proceedings under this chapter and a register of persons licensed under it. The register shall show the name of every living licensed physical therapist, his last-known place of business, last-known place of residence, and the date and number of his license and certificate as a licensed physical therapist.

(4) The department shall, during the month of April every year in which the renewal of licenses is required, compile a list of licensed physical therapists authorized to practice physical therapy in the state and shall mail, upon request, a copy of that list to the superintendent of every known hospital and every person licensed to practice medicine and surgery in the state. An interested person in the state is entitled to obtain a copy of the list on application to the department and payment of an amount not in excess of the cost of the list so furnished.

(5) The department may change addresses and surnames on the licensee's records only on the specific written request by the individual licensee.

History: En. Sec. 14, Ch. 39, L. 1961; amd. Sec. 249, Ch. 350, L. 1974; R.C.M. 1947, 66-2514; amd. Sec. 1, Ch. 449, L. 1979; amd. Sec. 8, Ch. 491, L. 1979.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Power of agencies to issue subpoenas, 2-4-104.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Public records, Title 2, ch. 6.

Prohibition on distribution or sale of mailing lists, 2-6-109.

Allocation for administrative purposes only, 2-15-121.

Quasi-judicial boards, 2-15-124.

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.

Arrest of witness for disobedience of subpoena, 26-2-106, 26-2-107.

Duties of Department, 37-1-101.

Duties of boards, 37-1-131.

37-11-202. Investigation and report of violations. (1) The board shall:

(a) investigate every alleged violation of this chapter coming to its notice;

(b) report to the proper authority all cases that, in the judgment of the board, warrant prosecution;

(c) formulate a written complaint process for use in reporting alleged violations;

(d) assist the proper county attorney or the attorney general in the prosecution of all persons who violate any provision of Title 37, chapter 11.

(2) The attorney general shall serve as attorney for the board.

History: En. Sec. 15, Ch. 39, L. 1961; R.C.M. 1947, 66-2515; amd. Sec. 9, Ch. 491, L. 1979.

Cross-References

Duties of Attorney General, 2-15-501.

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

Licensing investigation and review — record access, 37-1-135.

37-11-203. Travel expense — deposit of fees. (1) Each board member shall receive compensation and travel expenses as provided for in 37-1-133.

(2) All fees collected by the department shall be deposited in the state special revenue account for the use of the board, subject to 37-1-101(6). The department shall keep an accurate account of funds received and expenditures made from the account.

(3) The board of medical examiners shall transfer funds in the state special revenue account collected after January 1, 1979, which were derived from

the examination and licensure or relicensure of physical therapists in this state to the state special revenue account designated as the "physical therapist account".

History: En. Sec. 10, Ch. 491, L. 1979; amd. Sec. 16, Ch. 474, L. 1981; amd. Sec. 1, Ch. 277, L. 1983.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-11-301. Unauthorized representation as licensed therapist. A person who is not licensed under this chapter as a physical therapist or whose license has been suspended or revoked or whose license has lapsed and has not been revived who uses in connection with his name the words or letters "L.P.T.", "Licensed Physical Therapist", "P.T.", "Physical Therapist", "R.P.T.", "Registered Physical Therapist", or any other letters, words, or insignia indicating or implying that he is a licensed physical therapist or who in any way, orally or in writing or in print or by sign, directly or by implication, represents himself as a physical therapist shall be guilty of a misdemeanor.

History: En. Sec. 11, Ch. 39, L. 1961; R.C.M. 1947, 66-2511; amd. Sec. 11, Ch. 491, L. 1979.

37-11-302. False oath or fraudulent representation to obtain license. A person who makes a willfully false oath or affirmation in any case in which an oath or affirmation is required by this chapter or who obtains or attempts to obtain a license by any fraudulent representation shall be guilty of a misdemeanor.

History: En. Sec. 12, Ch. 39, L. 1961; R.C.M. 1947, 66-2512.

Cross-References

Oath defined, 1-1-201.

Oaths, Title 1, ch. 6.

Perjury, 45-7-201.

False swearing, 45-7-202.

37-11-303. Qualifications of applicants for license. To be eligible for a license as a physical therapist, an applicant must:

(1) be of good moral character and at least 18 years of age;

(2) have graduated from an accredited school of physical therapy approved by the board;

(3) either:

(a) pass to the satisfaction of the board a written examination prescribed by the board and, if considered necessary, an oral interview to determine the fitness of the applicant to practice as a physical therapist; or

(b) be entitled to a license without examination under 37-11-307.

History: En. Sec. 2, Ch. 39, L. 1961; amd. Sec. 8, Ch. 168, L. 1971; amd. Sec. 242, Ch. 350, L. 1974; amd. Sec. 24, Ch. 101, L. 1977; R.C.M. 1947, 66-2502; amd. Sec. 12, Ch. 491, L. 1979; amd. Sec. 1, Ch. 456, L. 1981.

Cross-References

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-11-304. Application for examination — fee. (1) Unless entitled to a license under 37-11-307, a person who desires to be licensed as a physical therapist shall apply to the department in writing, on a form furnished by the department. He shall embody in that application evidence under oath, satisfactory to the board, of his possessing the qualifications preliminary to examination required by 37-11-303.

(2) He shall pay to the department at the time of filing his application a fee as established by the board by rule. Said fee shall be commensurate with the cost of the examination and its administration and shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

(3) Anyone failing to pass the required examination is entitled to a second examination within 6 months.

History: En. Sec. 3, Ch. 39, L. 1961; amd. Sec. 133, Ch. 147, L. 1963; amd. Sec. 1, Ch. 227, L. 1974; amd. Sec. 243, Ch. 350, L. 1974; R.C.M. 1947, 66-2503; amd. Sec. 1, Ch. 277, L. 1983.

Cross-References

Oath defined, 1-1-201.

Proof of execution, Title 1, ch. 5, part 3.

Power of notary to take acknowledgments, 1-5-416.

Oaths, Title 1, ch. 6.

Affidavits, Title 26, ch. 1, part 10.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Perjury, 45-7-201.

False swearing, 45-7-202.

37-11-305. Examination — scope. The department shall, subject to 37-1-101, examine applicants for licenses as physical therapists at times and places the board determines. The examinations shall embrace subjects the board considers necessary to determine the applicant's fitness.

History: En. Sec. 6, Ch. 39, L. 1961; amd. Sec. 245, Ch. 350, L. 1974; R.C.M. 1947, 66-2506.

37-11-306. Issuance of license — certificate as evidence. The department shall license as a physical therapist each applicant who proves to the satisfaction of the board his fitness for a license under this chapter. The department shall issue to each person licensed a license certificate, which is prima facie evidence of the right of the person to whom it is issued to represent himself as a licensed physical therapist, subject to the conditions and limitations of this chapter.

History: En. Sec. 7, Ch. 39, L. 1961; amd. Sec. 246, Ch. 350, L. 1974; R.C.M. 1947, 66-2507.

37-11-307. Applicants licensed in other states. The board may, in its discretion, authorize the department to license as a physical therapist, without examination, on the payment of the required fee as established by the board, an applicant for license who is a physical therapist licensed under the laws of another state or territory if the applicant has met the same requirements as applicants licensed by examination under this chapter. Those applicants who have been licensed in another state or territory by examination other than the examination recognized under this chapter may be considered for licensure by the board if the requirements for a physical therapy license in the state or territory in which the applicant was tested were at least equal to those requirements in force in this state at that time. However, the board may require a written, oral, or practical examination and may require continued study or refresher courses.

History: En. Sec. 5, Ch. 39, L. 1961; amd. Sec. 2, Ch. 227, L. 1974; amd. Sec. 244, Ch. 350, L. 1974; R.C.M. 1947, 66-2505; amd. Sec. 13, Ch. 491, L. 1979; amd. Sec. 25, Ch. 345, L. 1981; amd. Sec. 1, Ch. 454, L. 1983.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-11-308. Annual renewal of license — fee. A licensed physical therapist shall, during January, apply to the department for a renewal of his license and pay a fee which shall be set by board rule. A license that is not renewed before April every year automatically lapses. The board may, in its discretion, revive and renew a lapsed license on the payment of all past unpaid renewal fees or a late renewal fee.

History: **En. Sec. 8, Ch. 39, L. 1961; amd. Sec. 1, Ch. 353, L. 1969; amd. Sec. 247, Ch. 350, L. 1974; R.C.M. 1947, 66-2508; amd. Sec. 14, Ch. 491, L. 1979; amd. Sec. 26, Ch. 345, L. 1981.**

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-11-309. Temporary license. (1) On payment to the department of a fee which shall be set by board rule and the submission of a written application on forms provided by it, the department shall issue, without examination, a temporary license to practice physical therapy in this state for a period not to exceed 1 year to a person who meets the qualifications set forth in 37-11-303, on submission by the person of evidence satisfactory to the board that he is in this state on a temporary basis to assist in a case of medical emergency or to engage in a special physical therapy project.

(2) The board may, upon receipt of an application for examination and upon receipt of a temporary license fee not to exceed $100, issue a temporary license to a person who has applied for a license under this chapter and who is, in the judgment of the board, eligible to take the examination provided for in 37-11-303. This applicant must work under the direction, guidance, and observation of a licensed physical therapist. This temporary license is available to an applicant only with respect to his first application. The temporary license shall expire when the board makes a final determination on the applicant's examination scores.

(3) The board may require an oral interview of all persons applying for a temporary license.

(4) The board shall adopt necessary and reasonable rules governing the procedures for applying and issuing temporary licenses.

History: **En. Sec. 10, Ch. 39, L. 1961; amd. Sec. 248, Ch. 350, L. 1974; R.C.M. 1947, 66-2510; amd. Sec. 15, Ch. 491, L. 1979; amd. Sec. 27, Ch. 345, L. 1981; amd. Sec. 2, Ch. 456, L. 1981.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-11-310. Foreign-trained applicants. The foreign-trained physical therapist applicant's transcripts will be evaluated by a board-approved agency which reviews credentials. Upon receipt of this evaluation the board shall determine whether the number of academic credits awarded meets equivalent educational standards for a physical therapist degree or certificate established by an American physical therapist association accredited school of physical therapy. If the applicant's professional education credit hours are approved by the board, the applicant is eligible for a temporary license prior to examination.

History: **En. Sec. 16, Ch. 491, L. 1979; amd. Sec. 2, Ch. 454, L. 1983.**

Cross-References

Nondiscrimination in licensing, 49-3-204.

37-11-311. Display of license. Each licensee shall display his original license or an official duplicate issued by the department and a renewal certificate in a conspicuous place in the principal office where he practices physical therapy. A reproduction displayed in lieu of the above is not authorized unless the reproduction is signed and notarized by a notary public.

History: En. Sec. 18, Ch. 491, L. 1979.

37-11-312 through 37-11-319 reserved.

37-11-320. Duty to report violations — immunity from liability. (1) Notwithstanding any provision of state law regarding the confidentiality of health care information, a physical therapist shall report to the board any information that appears to show that another physical therapist is:

(a) mentally or physically unable to engage safely in the practice of physical therapy; or

(b) guilty of any act, omission, or condition that is grounds for disciplinary action under 37-11-321.

(2) There is no liability on the part of and no cause of action may arise against a physical therapist who in good faith provides information to the board as required by subsection (1).

History: En. Sec. 2, Ch. 55, L. 1987.

Cross-References

Licensing investigation and review — record access, 37-1-135.

Health care practitioners — nonliability for peer review, Title 37, ch. 2, part 2.

Pharmacists — nonliability for peer review, 37-7-1101.

37-11-321. Refusal to issue or renew license. The board, after due notice and hearing, may refuse to license any applicant, and may refuse to renew, may suspend, may revoke, or take lesser disciplinary action on the license of any licensed person who:

(1) is habitually intoxicated or is addicted to the use of narcotic drugs;

(2) has been convicted of violating any state or federal narcotic law, subject to chapter 1, part 2, of this title;

(3) is, in the judgment of the board, guilty of immoral or unprofessional conduct as defined by board rule;

(4) has been convicted of any crime involving moral turpitude, subject to chapter 1, part 2, of this title;

(5) is guilty, in the judgment of the board, of gross negligence in his practice as a physical therapist;

(6) has obtained or attempted to obtain licensure by fraud or material misrepresentation;

(7) has been declared to be seriously mentally ill by a court of competent jurisdiction and has not thereafter been released from treatment and declared not to be seriously mentally ill;

(8) has treated or undertaken to treat ailments of human beings otherwise than by physical therapy;

(9) is guilty, in the judgment of the board, of conduct unbecoming a person licensed as a physical therapist or of conduct detrimental to the best interests of the public; or

(10) has practiced physical therapy beyond the scope and limitation of his training and education.

History: **En. Sec. 9, Ch. 39, L. 1961; amd. Sec. 25, Ch. 101, L. 1977; R.C.M. 1947, 66-2509; amd. Sec. 17, Ch. 491, L. 1979.**

See 37-3-102(2)

Cross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Duty of Department to investigate unethical conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-11-322. Penalties. Any person who knowingly violates any provisions of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $50 or more than $500 or by imprisonment in the county jail for a term of not less than 30 days or more than 6 months or by both such fine and imprisonment.

History: **En. Sec. 16, Ch. 39, L. 1961; R.C.M. 1947, 66-2516.**

Cross-References

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

CHAPTER 12

CHIROPRACTIC

Part 1 — General

37-12-101. Definitions — practice of chiropractic.
37-12-102. Exemptions — limitations on construction of chapter.
37-12-103. Duties of chiropractic practitioners.
37-12-104. Rights and limitations governing practice.

Part 2 — Board of Chiropractors

37-12-201. Organization of board — meetings — powers and duties.
37-12-202. Compensation of members — expenses.

Part 3 — Licensing

37-12-301. Unlawful to practice without license.
37-12-302. Applications — qualifications — fees.
37-12-303. Temporary permit.
37-12-304. Examinations — subjects.
37-12-305. Licensing chiropractors from other states without examination.
37-12-306. Repealed.
37-12-307. Annual renewal of license — fees — continuing education — inactive status.
37-12-308. Deposit of fees — accounting.
37-12-309. Municipal license fee prohibited.
37-12-310 through 37-12-320 reserved.
37-12-321. Unprofessional conduct.
37-12-322. Investigation of complaints — discipline of licensees — revocation or suspension of license.
37-12-323. Reconsideration of board action — fee for restoration of license.
37-12-324. Penalty for violation.

Chapter Cross-References

Professional service corporations, Title 35, ch. 4.

Part 1

General

Part Cross-References

Duty of chiropractor to report violation of Montana Elder Abuse Prevention Act, 53-5-511.

37-12-101. Definitions — practice of chiropractic. (1) Unless the context requires otherwise, in this chapter the following definitions apply:

(a) "Board" means the board of chiropractors provided for in 2-15-1847.

(b) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(2) "Chiropractic" is the system of specific adjustment or manipulation of the articulations and tissues of the body, particularly of the spinal column, for the correction of nerve interference and includes the use of recognized diagnostic and treatment methods as taught in chiropractic colleges but does not include surgery or the prescription or use of drugs.

History: (1)En. 66-501.1 by Sec. 46, Ch. 350, L. 1974; Sec. 66-501.1, R.C.M. 1947; (2)En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3144, R.C.M. 1921; re-en. Sec. 3144, R.C.M. 1935; amd. Sec. 1, Ch. 579, L. 1977; Sec. 66-507, R.C.M. 1947; R.C.M. 1947, 66-501.1, 66-507(1); amd. Sec. 3, Ch. 274, L. 1981.

37-12-102. Exemptions — limitations on construction of chapter. Nothing in this chapter shall be construed to restrain or restrict any legally licensed physician or surgeon or any legally licensed osteopath in the practice of his profession. The practice of chiropractic as herein defined is hereby declared not to be the practice of medicine or surgery within the meaning of the laws of the state of Montana defining the same and is further declared not to be the practice of osteopathy within the meaning of the laws of the state of Montana defining the same. Duly licensed chiropractors shall not be subject to the provisions of chapter 5 of this title or liable to any prosecution thereunder.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3154, R.C.M. 1921; re-en. Sec. 3154, R.C.M. 1935; R.C.M. 1947, 66-517.

Cross-References

Practice of medicine defined, 37-3-102.

Exemption from physician's licensing requirements, 37-3-103.

Practice of osteopathy defined, 37-5-101.

37-12-103. Duties of chiropractic practitioners. Chiropractic practitioners shall observe and be subject to all state and municipal regulations relating to the control of contagious and infectious diseases, sign death and birth certificates, and as to any and all matters pertaining to public health, report to the proper health officers the same as other practitioners.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3145, R.C.M. 1921; re-en. Sec. 3145, R.C.M. 1935; R.C.M. 1947, 66-508.

Cross-References

Reporting required by health care professionals, Title 37, ch. 2, part 3.

Duty of chiropractors to report child abuse, 41-3-201.

37-12-104. Rights and limitations governing practice. (1) Chiropractors licensed under this chapter shall have the right to practice that science defined as chiropractic under 37-12-101 in accordance with the method, thought, and practice of chiropractors, and they shall be permitted to use the prefix "Dr." or "Doctor" as a title but shall not in any way imply that they are medical doctors, osteopaths, or surgeons. They shall not prescribe for or administer to any person any medicine or drugs or practice medicine or surgery or osteopathy, except that the use of antiseptics for purposes of sanitation and hygiene and to prevent infection and contagion shall be permitted.

(2) Licensed chiropractors may diagnose, palpate, and treat the human body by the application of manipulative, manual, mechanical, and dietetic methods, including chiropractic physiotherapy, the use of supportive appliances, analytical instruments, and diagnostic x-ray in accordance with guidelines promulgated or approved by state or federal health regulatory agencies.

History: (1)En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3146, R.C.M. 1921; re-en. Sec. 3146, R.C.M. 1935; Sec. 66-509, R.C.M. 1947; (2)En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3144, R.C.M. 1921; re-en. Sec. 3144, R.C.M. 1935; amd. Sec. 1, Ch. 579, L. 1977; Sec. 66-507, R.C.M. 1947; R.C.M. 1947, 66-507(2), 66-509; amd. Sec. 1, Ch. 203, L. 1989.

Compiler's Comments

1989 Amendment: In (1) substituted "medical doctors, osteopaths" for "regular physicians".

Part 2

Board of Chiropractors

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1847.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-12-201. Organization of board — meetings — powers and duties. (1) The board shall elect annually a president, vice-president, and secretary-treasurer from its membership.

(2) The board shall hold a regular meeting each year at Helena and shall hold special meetings at times and places as a majority of the board designates. A majority of the board constitutes a quorum.

(3) The board shall:

(a) administer oaths, take affidavits, summon witnesses, and take testimony as to matters coming within the scope of the board;

(b) adopt a seal which shall be affixed to licenses issued;

(c) make a schedule of minimum educational requirements, which are without prejudice, partiality, or discrimination, as to the different schools of chiropractic;

(d) adopt rules necessary for the implementation, administration, continuation, and enforcement of this chapter. The rules must address but are not limited to license applications, form and display of license, license examination format, criteria for and grading of examinations, and disciplinary standards for licensees;

(e) investigate complaints;

(f) make determinations of the qualifications of applicants under this chapter;

(g) administer the examination for licensure under this chapter;

(h) establish and collect fees, fines, and charges as provided in this chapter;

(i) issue, suspend, or revoke licenses under the conditions prescribed in this chapter; and

(j) certify that a chiropractor who meets the standards that the board by rule adopts is a qualified evaluator for purposes of 39-71-711.

(4) The department shall keep a record of the proceedings of the board, which shall at all times be open to public inspection.

History: **En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3140, R.C.M. 1921; re-en. Sec. 3140, R.C.M. 1935; amd. Sec. 47, Ch. 350, L. 1974; amd. Sec. 1, Ch. 432, L. 1977; R.C.M. 1947, 66-503; amd. Sec. 1, Ch. 321, L. 1987; amd. Sec. 1, Ch. 161, L. 1989; amd. Sec. 2, Ch. 203, L. 1989.**

Compiler's Comments

1989 Amendments: Chapter 161 inserted (3)(j) relating to certification of a chiropractor as a qualified evaluator; and made minor changes in punctuation.

Chapter 203 in (3)(h) substituted "establish and collect fees, fines, and charges as provided" for "collect fees and charges prescribed".

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Oath defined, 1-1-201.

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

Proof of execution, Title 1, ch. 5, part 3.

Power of notary to take acknowledgments, 1-5-416.

Oaths, Title 1, ch. 6.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Power of agencies to issue subpoenas, 2-4-104.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Public records, Title 2, ch. 6.

Allocation for administrative purposes only, 2-15-121.

Quasi-judicial boards, 2-15-124.

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.

Affidavits, Title 26, ch. 1, part 10.

Arrest of witness for disobedience of subpoena, 26-2-106, 26-2-107.

Duties of Department, 37-1-101.

Duties of boards, 37-1-131.

Perjury and other falsification in official matters, Title 45, ch. 7, part 2.

Disrupting meeting as disorderly conduct, 45-8-101.

Nondiscrimination in licensing, 49-3-204.

37-12-202. Compensation of members — expenses. The members of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: **En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3150, R.C.M. 1921; re-en. Sec. 3150, R.C.M. 1935; amd. Sec. 4, Ch. 188, L. 1961; amd. Sec. 142, Ch. 147, L. 1963; amd. Sec. 20, Ch. 93, L. 1969; amd. sec. 54, Ch. 350, L. 1974; amd. Sec. 26, Ch. 439, L. 1975; R.C.M. 1947, 66-513(3); amd. Sec. 17, Ch. 474, L. 1981.**

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-12-301. Unlawful to practice without license. It is unlawful for a person to practice chiropractic in this state without first obtaining a license under this chapter.

History: **En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3141, R.C.M. 1921; re-en. Sec. 3141, R.C.M. 1935; amd. Sec. 48, Ch. 350, L. 1974; amd. Sec. 2, Ch. 432, L. 1977; R.C.M. 1947, 66-504(1).**

37-12-302. Applications — qualifications — fees. (1) A person wishing to practice chiropractic in this state shall make application to the department, on the form and in the manner prescribed by the board, at least 21 days prior to a meeting of the board. Each applicant shall be a graduate of or expect to graduate within 90 days prior to the next licensing examination administered by the board from a college of chiropractic approved by the board, in which he has attended a course of study of 4 school years of not less than 9 months each, and shall present evidence showing completion of 2 full academic years of college or university work from an institution acceptable to the board of regents of higher education. Application shall be made in writing and shall be sworn to by an officer authorized to administer oaths and shall recite the history of applicant's educational qualifications, how long he has studied chiropractic, of what school or college he is a graduate, and the length of time he has been engaged in practice. The application shall be accompanied with proofs by diplomas, certificates, etc., and satisfactory evidence of good character and reputation.

(2) There shall be paid to the department by an applicant for a license a fee prescribed by the board. Like fees shall be paid for a subsequent examination and application.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; amd. Sec. 1, Ch. 224, L. 1919; re-en. Sec. 3142, R.C.M. 1921; amd. Sec. 1, Ch. 129, L. 1933; re-en. Sec. 3142, R.C.M. 1935; amd. Sec. 1, Ch. 123, L. 1951; amd. Sec. 1, Ch. 178, L. 1955; amd. Sec. 1, Ch. 188, L. 1961; amd. Sec. 49, Ch. 350, L. 1974; amd. Sec. 3, Ch. 432, L. 1977; R.C.M. 1947, 66-505; amd. Sec. 28, Ch. 345, L. 1981; amd. Sec. 3, Ch. 203, L. 1989.

Compiler's Comments

1989 Amendment: In second sentence of (1) inserted "or expect to graduate within 90 days prior to the next licensing examination administered by the board from".

Cross-References

Oath defined, 1-1-201.

Proof of execution, Title 1, ch. 5, part 3.

Power of notary to take acknowledgments, 1-5-416.

Oath, Title 1, ch. 6.

Affidavits, Title 26, ch. 1, part 10.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Perjury, 45-7-201.

False swearing, 45-7-202.

37-12-303. Temporary permit. When application for examination for license is filed with the department under 37-12-302, the board may authorize the department to issue a temporary permit to practice.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3141, R.C.M. 1921; re-en. Sec. 3141, R.C.M. 1935; amd. Sec. 48, Ch. 350, L. 1974; amd. Sec. 2, Ch. 432, L. 1977; R.C.M. 1947, 66-504(2).

37-12-304. Examinations — subjects. (1) Examinations for a license to practice chiropractic shall be made by the department, subject to 37-1-101, according to the method considered by the board to be the most practicable and expeditious to test the applicant's qualifications. The application shall be designated by a number instead of the applicant's name so that the identity will not be discovered or disclosed until after the examination papers are graded.

(2) Examinations shall be made in writing, on subjects taught in chiropractic colleges, including the use of x-ray equipment and radiographs. Additional subjects may be prescribed by the board to meet new conditions. A

license shall be granted to applicants who correctly answer 75% of all questions asked, including x-ray questions. If an applicant fails to answer correctly 60% of the questions on any branch of the examination, he is not entitled to a license.

(3) The board may accept the grades an applicant has received in the written examinations given by the national board of chiropractic examiners and may authorize the department to issue a license without further written examination to an applicant who holds a valid certificate from the national board of chiropractic examiners if the applicant meets the other requirements of this chapter. The board may require an applicant to satisfactorily pass a clinical proficiency examination before being issued a license, even though he holds a valid certificate from the national board of chiropractic examiners.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3143, R.C.M. 1921; re-en. Sec. 3143, R.C.M. 1935; amd. Sec. 1, Ch. 36, L. 1967; amd. Sec. 50, Ch. 350, L. 1974; amd. Sec. 4, Ch. 432, L. 1977; R.C.M. 1947, 66-506; amd. Sec. 1, Ch. 347, L. 1983.

37-12-305. Licensing chiropractors from other states without examination. Persons licensed to practice chiropractic under the laws of any other state having chiropractic educational requirements equal to this chapter may, in the discretion of the board, be issued a license to practice in this state without examination upon payment of the fee prescribed by the board as herein provided.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3152, R.C.M. 1921; re-en. Sec. 3152, R.C.M. 1935; amd. Sec. 5, Ch. 188, L. 1961; R.C.M. 1947, 66-515; amd. Sec. 29, Ch. 345, L. 1981.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-12-306. Repealed. Sec. 4, Ch. 66, L. 1981.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3148, R.C.M. 1921; re-en. Sec. 3148, R.C.M. 1935; amd. Sec. 52, Ch. 350, L. 1974; R.C.M. 1947, 66-511.

37-12-307. Annual renewal of license — fees — continuing education — inactive status. (1) A license expires on September 1 of each year and shall be renewed by the department on payment of a renewal fee, as set by the board, and the presentation of evidence satisfactory to the board that the licensee, in the year preceding the application for renewal, attended and successfully completed a postgraduate educational program for chiropractors approved by the board. All applicants for renewal who have not paid the renewal fee prior to October 1 of each year shall pay an additional late fee prescribed by the board.

(2) The board shall by rule set standards for inactive status. It shall charge an annual fee for a license placed on inactive status.

(3) An inactive license may be reinstated to active status upon payment of a fee and completion of the continuing education requirements set by the board.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; amd. Sec. 1, Ch. 90, L. 1921; re-en. Sec. 3149, R.C.M. 1921; amd. Sec. 2, Ch. 129, L. 1933; re-en. Sec. 3149, R.C.M. 1935; amd. Sec. 2, Ch. 123, L. 1951; amd. Sec. 3, Ch. 188, L. 1961; amd. Sec. 1, Ch. 8, L. 1965; amd. Sec. 53, Ch. 350, L. 1974; amd. Sec. 1, Ch. 516, L. 1977;

R.C.M. 1947, 66-512(1); amd. Sec. 4, Ch. 155, L. 1981; amd. Sec. 30, Ch. 345, L. 1981; amd. Sec. 1, Ch. 344, L. 1983; amd. Sec. 2, Ch. 321, L. 1987.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-12-308. Deposit of fees — accounting. (1) Fees collected by the department under this chapter shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

(2) The department shall keep an accurate account of funds received and vouchers issued by the department.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3150, R.C.M. 1921; re-en. Sec. 3150, R.C.M. 1935; amd. Sec. 4, Ch. 188, L. 1961; amd. Sec. 142, Ch. 147, L. 1963; amd. Sec. 20, Ch. 93, L. 1969; amd. sec. 54, Ch. 350, L. 1974; amd. Sec. 26, Ch. 439, L. 1975; R.C.M. 1947, 66-513(1), (2); amd. Sec. 1, Ch. 277, L. 1983.

37-12-309. Municipal license fee prohibited. No license fee or license tax may be imposed upon doctors of chiropractic as a condition to the practice of their profession by a municipality or any other political subdivision of the state, including a local government with self-governing powers.

History: En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; amd. Sec. 1, Ch. 90, L. 1921; re-en. Sec. 3149, R.C.M. 1921; amd. Sec. 2, Ch. 129, L. 1933; re-en. Sec. 3149, R.C.M. 1935; amd. Sec. 2, Ch. 123, L. 1951; amd. Sec. 3, Ch. 188, L. 1961; amd. Sec. 1, Ch. 8, L. 1965; amd. Sec. 53, Ch. 350, L. 1974; amd. Sec. 1, Ch. 516, L. 1977; R.C.M. 1947, 66-512(2); amd. Sec. 3, Ch. 321, L. 1987.

37-12-310 through 37-12-320 reserved.

37-12-321. Unprofessional conduct. As used in this chapter, "unprofessional conduct" means:

(1) resorting to fraud, misrepresentation, or deception in applying for or securing a license or in taking the examination provided for in this chapter;

(2) obtaining any form of compensation, directly or indirectly, by the misrepresentation that a manifestly incurable disease, injury, or condition can be cured;

(3) practicing chiropractic under a false or assumed name or impersonating another practitioner of like or different name;

(4) knowingly disobeying a rule of the board;

(5) conviction of a criminal offense involving moral turpitude. A certified copy of the judgment of conviction is conclusive evidence of the conviction. This subsection is subject to chapter 1, part 2, of this title.

(6) habitual intemperance or excessive use of narcotic drugs, alcohol, or any other substance to the extent that such use impairs the user's physical or mental professional capability;

(7) administering, dispensing, or prescribing a narcotic or hallucinatory drug, as defined by the federal food and drug administration or successors;

(8) resorting to fraud, misrepresentation, or deception in the examination or treatment of a person or in billing or reporting to a person, company, institution, or organization;

(9) testifying in court on a contingency basis;

(10) conspiring to misrepresent or knowingly misrepresenting physical conditions in order to increase or decrease a settlement or award;

(11) aiding or abetting in the practice of chiropractic a person not licensed to practice chiropractic or a person whose license is suspended;

(12) practicing chiropractic as the partner, agent, or employee of or in joint venture with a person not licensed to practice chiropractic in this state. However, this does not prohibit incorporation as a professional service corporation under Title 35, chapter 4, or prevent a single consultation with or a single treatment by a person licensed to practice chiropractic in another state or territory of the United States or a foreign country.

(13) violating, attempting or conspiring to violate, or aiding or abetting in the violation of this chapter or the rules adopted under it; or

(14) conduct unbecoming a person licensed to practice chiropractic or detrimental to the best interests of the public.

History: En. 66-510.1 by Sec. 2, Ch. 516, L. 1977; R.C.M. 1947, 66-510.1.

Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unethical conduct, 37-1-101.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-12-322. Investigation of complaints — discipline of licensees — revocation or suspension of license. (1) The board may make an investigation whenever it is brought to its attention that there is reason to suspect that a person licensed to practice chiropractic:

(a) has a mental or physical condition such that he is unable to safely engage in the practice of chiropractic;

(b) has been declared incompetent or seriously mentally ill by a court of competent jurisdiction and thereafter has not been declared competent or released from supervision;

(c) has procured his license through mistake;

(d) has been guilty of unprofessional conduct;

(e) has practiced chiropractic while his license was suspended or revoked;

(f) has while under probation violated its terms.

(2) The investigation shall be for the purpose of determining the probability of the existence of these conditions or the commission of these offenses and may include requiring the person to submit to a physical or mental examination, or both, by a physician or physicians selected by the board if it appears to be in the best interests of the public that this evaluation be secured. The board may examine the hospital records and reports of the licensee as part of the examination, and copies of these shall be released to the board on written request. If the board has reasonable cause to believe that this probability exists, the department shall mail to the person at his last address of record with the department, a specification of the charges against him, together with a written notice of the time and place of the hearing on such charges, advising him that he may be present in person and with counsel if he so desires to offer evidence and be heard in his defense. The time fixed for hearing may not be less than 30 days from the date of mailing the notice.

(3) Any person, including a member of the board, may file a sworn complaint with the department against a licensed chiropractor charging him with any of the offenses or conditions set forth in 37-12-321 or subsection (1) of this section, which complaint shall set forth a specification of the charges.

When the complaint has been filed, the board may make an investigation as provided by this section or may proceed to hearing. The department shall mail a copy of the complaint to the person charged, together with notice of hearing as provided in subsection (2) of this section.

(4) After the hearing, the board shall adopt a resolution finding that the offenses charged have or have not been committed or that the conditions charged do or do not exist. If the finding is in the negative, the board shall dismiss the charges. If the finding is in the affirmative, the board shall:

(a) revoke the license;

(b) suspend the licensee's right to practice for a period not to exceed 1 year;

(c) suspend its judgment of revocation on terms and conditions determined by the board;

(d) place the licensee on probation;

(e) fine the licensee in an amount not to exceed $500 for each incident; or

(f) take any other disciplinary action which the board in its discretion considers proper.

(5) In cases of revocation, suspension, or probation, the department shall record the facts of the case and all actions of the board in relation thereto.

(6) On the expiration of a term of suspension, the licensee shall be reinstated by the board if he furnishes evidence, satisfactory to the board, that he is then of good moral character and conduct or restored to good health and that he has not practiced chiropractic during the term of suspension. If the evidence fails to establish such facts to the satisfaction of the board, the board shall proceed to hearing on revocation with notice as provided in subsection (2) of this section.

(7) Following a final determination resulting in any disciplinary action taken by the board under subsection (4), the board may recover from the disciplined party all reasonable costs of any proceeding, not to exceed $1,000, incurred for the purpose of the disciplinary action. Fines and costs recovered must be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. 66-510.2 by Sec. 3, Ch. 516, L. 1977; R.C.M. 1947, 66-510.2; amd. Sec. 4, Ch. 203, L. 1989.

Compiler's Comments

1989 Amendment: Inserted (4)(e) authorizing a fine; and inserted (7) relating to recovery of costs and deposit of costs and fines.

Cross-References

Oath defined, 1-1-201.

Proof of execution, Title 1, ch. 5, part 3.

Power of notary to take acknowledgments, 1-5-416.

Oaths, Title 1, ch. 6.

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Affidavits, Title 26, ch. 1, part 10.

Duty of Department to investigate unethical practices, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Perjury, 45-7-201.

False swearing, 45-7-202.

37-12-323. Reconsideration of board action — fee for restoration of license. (1) At any time after refusal, suspension, or revocation of license or placement on probation or any other disciplinary action, the board may, on its own motion or on application, reconsider its prior action and reverse, rescind, or modify such action.

(2) A person whose license has been revoked and later restored shall pay a fee prescribed by the board for the restoration.

History: **En. 66-510.3 by Sec. 4, Ch. 516, L. 1977; R.C.M. 1947, 66-510.3; amd. Sec. 31, Ch. 345, L. 1981.**

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-12-324. Penalty for violation. Any person who shall practice or attempt to practice chiropractic or any person who shall buy, sell, or fraudulently obtain any diploma or license to practice chiropractic, whether recorded or not, or who shall use the title "chiropractor", "D.C.", "Ph.C.", or any word title to influence belief that he is engaged in the practice of chiropractic without first complying with the provisions of this chapter or any person who shall violate any of the provisions of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $100 or more than $700 or by imprisonment in a county jail for not less than 30 days or more than 7 months or by both such fine and imprisonment. Prosecutions for the violation of this chapter shall be instituted in the district courts.

History: **En. initiative measure, Nov. 1918; effective under governor's proclamation, Dec. 28, 1918; re-en. Sec. 3153, R.C.M. 1921; re-en. Sec. 3153, R.C.M. 1935; amd. Sec. 1, Ch. 74, L. 1943; R.C.M. 1947, 66-516.**

CHAPTER 13

ACUPUNCTURE PRACTICE ACT

Part 1 — General

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37-13-313. Reinstatement after period of suspension.
37-13-314. Application of administrative procedures.

37-13-315. Enjoining unlawful practice.
37-13-316. Penalty.

Part 1

General

37-13-101. Citation of chapter. This chapter shall be known and may be cited as the "Acupuncture Practice Act of 1974".

History: En. 66-3401 by Sec. 1, Ch. 317, L. 1974; R.C.M. 1947, 66-3401.

37-13-102. Legislative finding and purpose. The legislature finds and declares that the practice of acupuncture in Montana affects the public health, safety, and welfare and should therefore be subject to regulation and control in the public interest in order to protect the public from the unauthorized and unqualified practice of acupuncture and from unprofessional conduct by persons licensed to practice acupuncture.

History: En. 66-3402 by Sec. 2, Ch. 317, L. 1974; R.C.M. 1947, 66-3402.

37-13-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the Montana state board of medical examiners.

(2) "Acupuncture" means the treatment of the human body by means of mechanical, thermal, or electrical stimulation effected by the insertion of solid needles.

(3) "Acupuncturist" means a natural person licensed by the board of medical examiners to practice acupuncture.

(4) "School of acupuncture" means a school where acupuncture is taught that has been recognized and designated by the board of medical examiners.

History: En. 66-3403 by Sec. 3, Ch. 317, L. 1974; R.C.M. 1947, 66-3403.

37-13-104. Partial exemptions. Nothing in this chapter shall be construed to require doctors of medicine, osteopathy, chiropractic, dentistry, and podiatry who are licensed in Montana to take further examinations in anatomy, physiology, chemistry, dermatology, diagnosis, bacteriology, materia medica, or other subjects which are or may be required for licensure in their respective professions; but no doctor of medicine, osteopathy, chiropractic, dentistry, or podiatry shall practice acupuncture in this state unless and until he has completed a course and passed an examination in acupuncture as required by this chapter.

History: En. 66-3415 by Sec. 15, Ch. 317, L. 1974; R.C.M. 1947, 66-3415.

Part 2

Board of Medical Examiners

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1841.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-13-201. Powers and duties. In addition to all other powers and duties conferred and imposed upon the board by this chapter, the board shall have and exercise the following powers and duties:

(1) to promulgate, under the applicable provisions of the Montana Administrative Procedure Act, rules which it determines to be necessary to carry out the provisions of this chapter;

(2) to adopt a schedule of minimum educational requirements, not inconsistent with the provisions of this chapter;

(3) to prescribe forms for application for examination and license;

(4) to prepare and supervise examination of applicants for license to practice acupuncture;

(5) to obtain the services of professional examination agencies in lieu of its own preparation of the examinations;

(6) to issue, revoke, and suspend licenses as hereinafter provided;

(7) to hold hearings, issue subpoenas, administer oaths, and take testimony and proofs concerning all matters within its jurisdiction;

(8) to issue commissions to take depositions of witnesses who are sick or absent from the state; and

(9) to adopt a seal, which shall be affixed to all licenses issued by the board and other official papers.

History: En. 66-3405 by Sec. 5, Ch. 317, L. 1974; R.C.M. 1947, 66-3405.

Cross-References

Oath defined, 1-1-201.

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

Proof of execution, Title 1, ch. 5, part 3.

Power of notary to take acknowledgments, 1-5-416.

Oaths, Title 1, ch. 6.

Power of agencies to issue subpoenas, 2-4-104.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Allocation for administrative purposes only, 2-15-121.

Quasi-judicial boards, 2-15-124.

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.

Affidavits, Title 26, ch. 1, part 10.

Arrest of witness for disobedience of subpoena, 26-2-106, 26-2-107.

Duties of boards, 37-1-131.

Perjury, 45-7-201.

False swearing, 45-7-202.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-13-301. License required for practice. No person may engage in the practice of acupuncture in this state unless he is licensed under the provisions of this chapter.

History: En. 66-3404, by Sec. 4, Ch. 317, L. 1974; R.C.M. 1947, 66-3404.

37-13-302. Application for licensure — fee — qualifications. (1) Each person desiring to practice acupuncture in this state shall make application for licensure with the secretary of the board, upon the forms and in the manner prescribed by the board. A fee prescribed by the board shall accompany the application.

(2) A person making application shall furnish the board evidence that he is:

(a) at least 18 years of age;

(b) of good moral character, as determined by the board;

(c) a graduate of an approved school of acupuncture that is approved by the national accreditation commission for schools and colleges of acupuncture and oriental medicine and offers a course of at least 1,000 hours of entry-level training in recognized branches of acupuncture or an equivalent curriculum approved by the board; and

(d) has passed an examination prepared and administered by the board or an examination prepared and administered by the national commission for the certification of acupuncturists.

History: En. 66-3406 by Sec. 6, Ch. 317, L. 1974; R.C.M. 1947, 66-3406; amd. Sec. 4, Ch. 341, L. 1981; amd. Sec. 32, Ch. 345, L. 1981; amd. Sec. 1, Ch. 307, L. 1987; amd. Sec. 1, Ch. 327, L. 1989.

Compiler's Comments

1989 Amendment: In (2)(c) substituted "national accreditation commission for schools and colleges of acupuncture and oriental medicine" for "American medical association".

Cross-References

Standardized forms, 37-1-104.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

37-13-303. Repealed. Sec. 2, Ch. 307, L. 1987.

History: En. 66-3407 by Sec. 7, Ch. 317, L. 1974; R.C.M. 1947, 66-3407; amd. Sec. 33, Ch. 345, L. 1981.

37-13-304. Issuance of certificate of license — license fee. All applicants successfully passing the examination required by this chapter shall be registered as licensed acupuncturists in the board register and, upon the payment of a license fee prescribed by the board, shall be issued a certificate of license in such form as prescribed by the board. The certificate shall bear the official seal of the board.

History: En. 66-3408 by Sec. 8, Ch. 317, L. 1974; R.C.M. 1947, 66-3408; amd. Sec. 34, Ch. 345, L. 1981.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-13-305. Admission of licensees from other states. A license without examination may be issued by the board to any acupuncturist licensed or certified in another state where the licensing or certification requirements are substantially equivalent to the requirements of this chapter, upon payment of the license fee prescribed by the board as herein provided.

History: En. 66-3409 by Sec. 9, Ch. 317, L. 1974; R.C.M. 1947, 66-3409; amd. Sec. 35, Ch. 345, L. 1981.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-13-306. Annual renewal — fee — military exemption. (1) The license to practice acupuncture shall expire on December 31 of each calendar year and shall be renewed without examination upon request of the licensee. The request for renewal shall be on forms prescribed by the board and accompanied by a renewal fee prescribed by the board. The request and fee shall be in the hands of the secretary of the board not later than the expiration date of the license.

(2) On or before December 1 of each calendar year, the secretary of the board shall notify each licensee by letter, addressed to his last place of residence as the same appears on the records of the board, that his license will expire on December 31 following the date of notice unless application for renewal, accompanied by the annual renewal fee, is received by the board on or prior to that date.

(3) Immediately following December 31 of each calendar year, the secretary shall notify all licensees from whom requests for renewal, accompanied by the renewal fee, have not been received that their licenses have expired and that they will be cancelled and revoked upon the records of the board unless a request for renewal and reinstatement, accompanied by the renewal fee and an additional fee prescribed by the board, shall be in the hands of the secretary prior to February 1 following the expiration date.

(4) Immediately following February 1 of each calendar year, the secretary of the board shall cancel and revoke upon its records all licenses which have not been renewed or reinstated as provided by this chapter and shall notify the licensees whose licenses are so revoked of such action.

(5) Any licensee who allows his license to lapse by failing to renew or reinstate the same as herein provided may subsequently reinstate the same upon good cause shown to the satisfaction of the board and upon payment of all annual renewal fees then accrued plus an additional fee prescribed by the board for each year following the cancelling of the license.

(6) Any person actively engaged in the military service of the United States and licensed to practice acupuncture as herein provided shall not be required to pay the annual renewal fee or make application for renewal until December 31 of the calendar year in which he returns from military service to civilian or inactive status.

History: **En. 66-3410 by Sec. 10, Ch. 317, L. 1974; R.C.M. 1947, 66-3410; amd. Sec. 36, Ch. 345, L. 1981.**

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-13-307. Deposit of moneys received. All moneys received under this chapter shall be deposited with the state treasurer and credited to an account to be designated by him. No money shall be paid out of the fund except upon vouchers drawn against the fund, signed and certified to by the secretary of the board. All funds so credited shall be available to the board for the payment of expenses incurred by it in the performance of its duties under this chapter.

History: **En. 66-3413 by Sec. 13, Ch. 317, L. 1974; R.C.M. 1947, 66-3413.**

37-13-308 through 37-13-310 reserved.

37-13-311. Denial, suspension, or revocation of license — grounds. The board may refuse to issue or may suspend or revoke a license issued pursuant to this chapter for any one or any combination of the following causes:

(1) conviction of a felony or conviction of a violation of any state or federal law regulating the possession, distribution, or use of any controlled substance as shown by a certified copy of record of the court, subject to chapter 1, part 2 of this title;

(2) being adjudicated incompetent or seriously mentally ill;

(3) sustaining a physical or mental disability which renders further practice dangerous;

(4) habitual drunkenness or habitual addiction to the use of a controlled substance;

(5) gross malpractice;

(6) engaging in any dishonorable, unethical, or unprofessional conduct which may deceive, defraud, or harm the public or which is unbecoming a person licensed to practice under this chapter;

(7) obtaining or any attempt to obtain a license or practice in the profession for money or any other thing of value by fraudulent misrepresentations;

(8) advertising by means of knowingly false or deceptive statement;

(9) advertising, practicing, or attempting to practice under a name other than one's own;

(10) using any false, fraudulent, or forged statement or document or engaging in any fraudulent, deceitful, dishonest, or immoral practice in connection with the licensing requirements of this chapter; or

(11) violating or attempting to violate or assisting or abetting the violation of or conspiring to violate any provision of this chapter.

History: En. 66-3411 by Sec. 11, Ch. 317, L. 1974; amd. Sec. 30, Ch. 101, L. 1977; R.C.M. 1947, 66-3411(1).

Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unethical conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-13-312. Denial, suspension, or revocation of license — procedure. (1) Any person, including any member of the board, may file a sworn complaint with the secretary of the board against any person having a license to practice acupuncture in this state charging him with the commission of any of the offenses set forth in 37-13-311, which complaint shall set forth a specification of the charges. When the complaint is filed, the secretary shall mail a copy to the person so accused at his last address of record with the board, together with a written notice of the time and place of a hearing thereon, advising him that he may be present in person and by counsel if he so desires to offer evidence and be heard in his defense. The time fixed for hearing may not be less than 30 days from the date of mailing the notice.

(2) At the time and place fixed for a hearing before the board as provided in subsection (1) of this section or at any time and place to which the matter may be continued, the board shall receive evidence upon the subject under

consideration and shall accord the person against whom charges are preferred a full and fair opportunity to be heard in his defense and shall, after consideration, adopt a resolution finding him guilty or not guilty of the matters charged. If the board finds that the conditions referred to in 37-13-311 do not exist with reference to the person or if he is found not guilty, the board shall dismiss the charges or complaint, but if the board finds that the conditions referred to in 37-13-311 do exist and the person is found guilty, the board shall:

(a) revoke his license;

(b) suspend his right to practice for a period not exceeding 1 year;

(c) suspend its judgment of revocation upon the terms and conditions to be determined by the board;

(d) place him on probation; or

(e) take such other action in relation to disciplining him as the board in its discretion considers proper.

(3) The secretary of the board in all cases of revocation, suspension, or probation shall enter in its records the facts of the action and of any subsequent action of the board with respect thereto.

History: En. 66-3411 by Sec. 11, Ch. 317, L. 1974; amd. Sec. 30, Ch. 101, L. 1977; R.C.M. 1947, 66-3411(part).

Cross-References

Oath defined, 1-1-201.

Oaths, Title 1, ch. 6.

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Affidavits, Title 26, ch. 1, part 10.

Disciplinary authority of boards — injunctions, 37-1-136.

Perjury, 45-7-201.

False swearing, 45-7-202.

37-13-313. Reinstatement after period of suspension. Upon the expiration of the term of suspension, the licensee shall be reinstated by the board provided the licensee furnishes the board with evidence that he is then of good moral character and conduct and restored to good health and that he has not practiced acupuncture in this state during the term of suspension. If the evidence fails to establish to the satisfaction of the board that the licensee is then of good moral character and conduct or restored to good health or if the evidence shows he has practiced acupuncture in this state during the term of suspension, the board shall revoke the license at a hearing, the notice and procedure of which shall be as herein provided, which revocation is final and absolute.

History: En. 66-3411 by Sec. 11, Ch. 317, L. 1974; amd. Sec. 30, Ch. 101, L. 1977; R.C.M. 1947, 66-3411(5).

Cross-References

Judicial review of contested cases, Title 2, ch. 4, part 7.

37-13-314. Application of administrative procedures. (1) The contested case procedures of the Montana Administrative Procedure Act apply to the notice and hearing required by 37-13-312 and 37-13-313, except that neither common law nor statutory rules of evidence need apply, but the board may make rules designed to exclude repetitive, redundant, or irrelevant testimony.

(2) Any person aggrieved by the final decision of the board may obtain judicial review of that decision. The judicial review procedure shall be the

same as that for contested cases under the Montana Administrative Procedure Act.

History: (1)En. 66-3411 by Sec. 11, Ch. 317, L. 1974; amd. Sec. 30, Ch. 101, L. 1977; Sec. 66-3411, R.C.M. 1947; (2)En. 66-3412 by Sec. 12, Ch. 317, L. 1974; Sec. 66-3412, R.C.M. 1947; R.C.M. 1947, 66-3411(part), 66-3412.

Cross-References

Contested case procedures, Title 2, ch. 4, part 6.

37-13-315. Enjoining unlawful practice. The practice of acupuncture in any way other than as defined in this chapter may be enjoined by the district court on petition by the board. In any such proceeding, it shall not be necessary to show that any person is individually injured by the actions complained of. If the respondent is found to have so practiced, the court shall enjoin him from so practicing unless and until he has been duly licensed. Procedure in such cases shall be the same as in any other injunction suit. The remedy by injunction is in addition to criminal prosecution and punishment.

History: En. 66-3414 by Sec. 14, Ch. 317, L. 1974; R.C.M. 1947, 66-3414.

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

Disciplinary authority of boards — injunctions, 37-1-136.

37-13-316. Penalty. Any person who violates any of the provisions of this chapter or the rules of the state board of acupuncture shall be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding 6 months or by a fine not exceeding $500, or both.

History: En. 66-3416 by Sec. 16, Ch. 317, L. 1974; R.C.M. 1947, 66-3416.

Cross-References

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

CHAPTER 14

RADIOLOGIC TECHNOLOGISTS

Part 1 — General

37-14-101. Purpose.
37-14-102. Definitions.

Part 2 — Board of Radiologic Technologists

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37-14-202. Rulemaking power.

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37-14-304. Licensure by endorsement.
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37-14-321. Revocation or suspension of license or permit.
37-14-322. Inspections.
37-14-323. Penalty for violation.

Chapter Cross-References
Nuclear regulation, Title 75, ch. 3.

Part 1

General

37-14-101. Purpose. The legislature declares that the practice of radiologic technology affects the public health, safety, and welfare and that it is therefore necessary to regulate and control such practice in the public interest. The purpose of this chapter is to protect the public from the unprofessional, improper, unauthorized, or unqualified practice of radiologic technology.

History: En. 66-3701.1 by Sec. 4, Ch. 310, L. 1977; R.C.M. 1947, 66-3701.1.

37-14-102. Definitions. In this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Board" means the board of radiologic technologists provided for in 2-15-1848.

(2) "Department" means the department of commerce.

(3) "License" means an authorization issued by the department to perform x-ray procedures on persons.

(4) "Licensed practitioner" means a person licensed or otherwise authorized by law to practice medicine, dentistry, denturitry, dental hygiene, podiatry, osteopathy, or chiropractic.

(5) "Limited permit technician" means a person who does not qualify for the issuance of a license under the provisions of this chapter but who has demonstrated, to the satisfaction of the board, the capability of performing specified high-quality x-ray procedures without endangering public health and safety.

(6) "Performance of x-ray procedures" means the involvement or completion of any portion of an x-ray procedure that may have an effect on the patient's accumulated x-ray radiation exposure, including positioning of the patient, technique selection, selection of ancillary equipment, initiation of exposure, and darkroom procedures.

(7) "Permit" means an authorization which may be granted by the board to perform x-ray procedures on persons when the applicant's qualifications do not meet standards required for the issuance of a license.

(8) "Radiologic technologist" means a person other than a licensed practitioner who has qualified under the provisions of this chapter for the issuance

of a license to perform diagnostic x-ray procedures on persons and who performs the following functions in connection with the diagnostic procedure:

(a) operates x-ray equipment to reveal the internal condition of patients for the diagnosis of fractures, diseases, and other injuries;

(b) prepares and positions patients for x-ray procedures;

(c) selects the proper radiographic technique for visualization of specific internal structures of the human body;

(d) selects the proper ancillary equipment to be utilized in the x-ray procedure to enhance the visualization of the desired structure;

(e) prepares film processing solutions and develops or processes the exposed x-ray film; and

(f) inspects, maintains, and performs minor repairs to x-ray equipment.

History: En. 66-3701 by Sec. 1, Ch. 336, L. 1975; amd. Sec. 1, Ch. 310, L. 1977; R.C.M. 1947, 66-3701; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 25, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 2, Ch. 166, L. 1985; amd. Sec. 46, Ch. 83, L. 1989.

Compiler's Comments

1989 Amendment: In definition of licensed practitioner deleted "chiropody".

Part 2

Board of Radiologic Technologists

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1848.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-14-201. Compensation of board members — meetings — quorum. (1) Board members shall receive compensation and travel expenses as provided for in 37-1-133.

(2) The board shall meet at least twice a year and elect a chairman at the first meeting of each calendar year.

(3) Four members of the board constitute a quorum for the purpose of transacting business.

History: En. 66-3703 by Sec. 4, Ch. 336, L. 1975; amd. Sec. 13, Ch. 453, L. 1977; R.C.M. 1947, 66-3703; amd. Sec. 18, Ch. 474, L. 1981.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Allocation for administrative purposes only, 2-15-121.

Quasi-judicial boards, 2-15-124.

Duty of Department to provide facilities, 37-1-101.

Duties of boards, 37-1-131.

Disrupting meeting as disorderly conduct, 45-8-101.

37-14-202. Rulemaking power. The board may promulgate rules necessary to carry out the provisions of this chapter and adjudicate contested cases under it.

History: En. 66-3704 by Sec. 5, Ch. 336, L. 1975; R.C.M. 1947, 66-3704.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-14-301. Limitation of license authority — exemptions. (1) No person may perform x-ray procedures on a person unless licensed or granted a limited permit under this chapter, with the following provisos:

(a) Licensure is not required for:

(i) a student enrolled in and attending a school or college of medicine, osteopathy, podiatry, dentistry, dental hygiene, chiropractic, or radiologic technology who applies x-ray radiation to persons under the specific direction of a person licensed to prescribe such examinations or treatment;

(ii) a person administering x-ray examinations related to the practice of dentistry or denturitry, provided such person is certified by the board of dentistry as having passed an examination testing his proficiency to administer x-ray examinations; or

(iii) a person who performs only darkroom procedures and is under the supervision of a licensed radiologic technologist or radiologist or is able to show evidence of completion of formal training in darkroom procedures as established by rule.

(b) Nothing in this chapter shall be construed to limit or affect in any respect the practice of their respective professions by duly licensed practitioners.

(2) A person licensed as a radiologic technologist may perform x-ray procedures on persons for medical, diagnostic, or therapeutic purposes under the specific direction of a person licensed to prescribe such procedures.

(3) A radiologic technologist licensed under this chapter may inject contrast media and radioactive isotopes (radio-nuclide material) intravenously upon request of a duly licensed practitioner. In the case of contrast media, the licensed practitioner requesting the procedure or the radiologist must be immediately available within the x-ray department. Such injections must be for diagnostic studies only and not for therapeutic purposes. The permitted injections include peripheral intravenous injections but specifically exclude intra-arterial or intracatheter injections. An uncertified radiologic technologist, a limited permit technician under 37-14-306, or an individual who is not licensed or authorized under another licensing act may not perform any of the activities listed in this subsection.

History: En. 66-3702 by Sec. 2, Ch. 336, L. 1975; R.C.M. 1947, 66-3702; amd. Sec. 1, Ch. 150, L. 1981; amd. Sec. 26, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 3, Ch. 166, L. 1985; amd. Sec. 17, Ch. 548, L. 1985; amd. Sec. 47, Ch. 83, L. 1989.

Compiler's Comments

1989 Amendment: In (1)(a)(i) deleted "chiropody".

37-14-302. Qualifications. (1) Each applicant for licensure as a radiologic technologist shall have satisfactorily completed a 24-month course of study in radiologic technology approved by the board.

(2) Each applicant for licensure as a radiologic technologist shall:

(a) be of good moral character;

(b) be at least 18 years of age; and

(c) not be addicted to intemperate use of alcohol or narcotic drugs.

History: En. 66-3705 by Sec. 6, Ch. 336, L. 1975; amd. Sec. 2, Ch. 310, L. 1977; R.C.M. 1947, 66-3705; amd. Sec. 2, Ch. 296, L. 1981.

Cross-References

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

37-14-303. Examination — application fee. (1) Examinations for licensure as a radiologic technologist shall include a written portion and may also include practical and oral portions as established by the board.

(2) The board shall provide applicants for licensure the opportunity for examinations at intervals not to exceed 6 months.

(3) A nonrefundable examination fee, established by the board, shall be submitted prior to examination for licensure. An applicant failing the examination shall be charged a nonrefundable application fee for any subsequent examination. An applicant failing any subsequent examination is not eligible for reexamination until 12 months following the last failed examination.

History: En. 66-3706 by Sec. 7, Ch. 336, L. 1975; amd. Sec. 3, Ch. 310, L. 1977; R.C.M. 1947, 66-3706(1) thru (3); amd. Sec. 37, Ch. 345, L. 1981.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-14-304. Licensure by endorsement. The board may accept in lieu of its own examination a certificate of the American registry of radiologic technologists (ARRT) or a certificate, registration, or license issued by another state whose qualifications are at least equal to those set forth in this chapter.

History: En. 66-3706 by Sec. 7, Ch. 336, L. 1975; amd. Sec. 3, Ch. 310, L. 1977; R.C.M. 1947, 66-3706(4).

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-14-305. Issuance of license or permit — fee. The board shall issue a license or permit to each applicant who has submitted a nonrefundable licensing fee set by the board and has met the requirements of this chapter.

History: En. 66-3707 by Sec. 8, Ch. 336, L. 1975; amd. Sec. 5, Ch. 310, L. 1977; R.C.M. 1947, 66-3707(part); amd. Sec. 38, Ch. 345, L. 1981.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-14-306. Permits. (1) The board may issue a permit to an applicant not qualifying for the issuance of a license under the provisions of this chapter but who has demonstrated, to the satisfaction of the board, the capability of performing high-quality x-ray procedures without endangering public health and safety. An applicant must be required to demonstrate this capability by completion of formal classroom training that meets the standards established by rule and by means of examination. Permits issued under provisions of this section and 37-14-305 shall specify x-ray procedures, defined and established by rule, that may be performed by the holder. Permits shall be valid for a period not to exceed 12 months but may be renewed under the provisions established by rule.

(2) Examinations for the issuance of a permit must include a written portion and may also include practical and oral portions as established by the board. The board shall provide applicants for permits the opportunity for examination at intervals not to exceed 6 months. A nonrefundable examination fee, established by the board, must be submitted prior to examination for a permit. An applicant failing the examination must be charged a nonrefundable examination fee for any subsequent examination. An applicant failing any subsequent examination shall meet any additional eligibility requirements established by rule for reexamination.

(3) Applicants meeting minimum requirements for licensure shall be issued a temporary permit to work as a radiologic technologist. This temporary permit shall expire 15 days after the date of first opportunity for examination.

(4) The board shall issue temporary permits to unlicensed persons to perform x-ray procedures when adequate evidence is provided the board that such a permit is necessary because of a regional hardship or emergency condition and that such person is capable of performing x-ray procedures without endangering public health and safety. Temporary permits may not exceed 12 months in duration but may be renewed by reestablishing, to the board's satisfaction, evidence of continued regional hardship or emergency conditions. The required adequate evidence of regional hardship, emergency conditions, and capability to perform x-ray procedures without endangering public health and safety must be established by rule.

(5) Each applicant for a permit must:

(a) be of good moral character;

(b) be at least 18 years of age; and

(c) not be addicted to intemperate use of alcohol or narcotic drugs.

History: En. 66-3707 by Sec. 8, Ch. 336, L. 1975; amd. Sec. 5, Ch. 310, L. 1977; R.C.M. 1947, 66-3707(2) thru (4); amd. Sec. 4, Ch. 166, L. 1985.

37-14-307. Duty to carry, display license or permit. Each radiologic technologist or limited permit technician shall carry or display his license or permit while at work. The license or permit shall be displayed on request.

History: En. 66-3707 by Sec. 8, Ch. 336, L. 1975; amd. Sec. 5, Ch. 310, L. 1977; R.C.M. 1947, 66-3707(5); amd. Sec. 5, Ch. 166, L. 1985.

37-14-308. Issuance of other documents. The board may issue to licensees or permittees such other cards, certificates, or documents as it considers necessary or convenient to the proper administration of this chapter.

History: En. 66-3707 by Sec. 8, Ch. 336, L. 1975; amd. Sec. 5, Ch. 310, L. 1977; R.C.M. 1947, 66-3707(6).

37-14-309. Replacement documents. The board may charge a reasonable fee for the replacement or duplication of a certificate, license, permit, or other document issued pursuant to this chapter.

History: En. 66-3709.1 by Sec. 9, Ch. 310, L. 1977; R.C.M. 1947, 66-3709.1.

37-14-310. Annual renewal — fee — reissuance of license. (1) Licenses expire annually on the date established by rule of the department.

(2) A license shall be renewed by the board upon payment of a license fee set by the board and submission of a renewal application containing such information as the board considers necessary to show that the applicant for renewal is a radiologic technologist in good standing.

(3) A radiologic technologist who has been licensed in Montana and whose license has not been revoked or suspended and who has temporarily ceased activities as a radiologic technologist for not more than 5 years may apply for reissuance of a license upon complying with the provisions of this section, including payment of an application fee.

History: En. 66-3709 by Sec. 10, Ch. 336, L. 1975; amd. Sec. 8, Ch. 310, L. 1977; R.C.M. 1947, 66-3709; amd. Sec. 5, Ch. 390, L. 1983; amd. Sec. 6, Ch. 166, L. 1985.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-14-311. Deposit of fees. Fees collected by the department shall be deposited in the state special revenue fund for the use of the board in administering this chapter.

History: En. 66-3707 by Sec. 8, Ch. 336, L. 1975; amd. Sec. 5, Ch. 310, L. 1977; R.C.M. 1947, 66-3707(part); amd. Sec. 1, Ch. 277, L. 1983.

37-14-312. Repealed. Sec. 3, Ch. 296, L. 1981.

History: En. 66-3708.1 by Sec. 7, Ch. 310, L. 1977; amd. Sec. 1, Ch. 573, L. 1977; R.C.M. 1947, 66-3708.1(1)(b).

37-14-313 through 37-14-320 reserved.

37-14-321. Revocation or suspension of license or permit. A license or permit may be suspended for a fixed period or may be revoked, or such technologist or technician may be censured, reprimanded, or otherwise disciplined as determined by the board if, after a hearing before the board, it is determined that the radiologic technologist or limited permit technician:

(1) is guilty of fraud or deceit in activities as a radiologic technologist or limited permit technician or has been guilty of any fraud or deceit in procuring the license or permit;

(2) has been convicted in a court of competent jurisdiction of a crime involving moral turpitude;

(3) is an habitual drunkard or is addicted to the use of narcotics or other drugs having a similar effect or is not mentally competent;

(4) is guilty of unethical conduct, as defined by rules promulgated by the board, or has been guilty of incompetence or negligence in his activities as a radiologic technologist or limited permit technician;

(5) has continued to perform as a radiologic technologist or limited permit technician without obtaining a license or permit or renewal as required by this chapter.

History: En. 66-3710 by Sec. 11, Ch. 336, L. 1975; R.C.M. 1947, 66-3710; amd. Sec. 7, Ch. 166, L. 1985.

Cross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unethical conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-14-322. Inspections. Inspections for compliance with the provisions of this chapter may be performed by:

(1) the board of radiologic technologists;

(2) the department of commerce;

(3) the department of health and environmental sciences.

History: En. 66-3711 by Sec. 12, Ch. 336, L. 1975; R.C.M. 1947, 66-3711; amd. Sec. 3, Ch. 274, L. 1981.

37-14-323. Penalty for violation. A person or the employer of a person who violates any provisions of this chapter or rules adopted under this chapter is guilty of an offense and shall be fined not to exceed $500. Each day of violation constitutes a separate offense.

History: En. 66-3712 by Sec. 13, Ch. 336, L. 1975; R.C.M. 1947, 66-3712.

Cross-References

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

Criminal responsibility of corporations, 45-2-311.

CHAPTER 15

SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

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37-15-311. Municipal tax prohibited.
37-15-312. Department to publish list of licensees and registrants.
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37-15-321. Denial, suspension, or revocation of license — reinstatement.
37-15-322. Penalty.
37-15-323. Injunction of unlawful practice.

Chapter Cross-References

Contracts by school districts for audiological services, 20-7-403(13).

Speech-language pathologist, audiologist-client privilege, 26-1-806.

Audiologist exempt from training period as hearing aid dispenser, 37-16-405.

Part 1

General

37-15-101. Purpose. The legislature of the state of Montana declares it to be a policy of this state that in order to safeguard the public health, safety, and welfare and to protect the public from being misled by incompetent, unscrupulous, and unauthorized persons and to protect the public from unprofessional conduct by qualified speech-language pathologists and audiologists and to help assure the availability of the highest possible quality speech-language pathology and audiology services to the communicatively handicapped people of this state, it is necessary to provide regulatory authority over persons offering speech-language pathology or audiology services to the public.

History: En. 66-3901 by Sec. 1, Ch. 543, L. 1975; R.C.M. 1947, 66-3901; amd. Sec. 6, Ch. 413, L. 1989.

Compiler's Comments

1989 Amendment: Changed references to speech pathology and speech pathologist to references to speech-language pathology and speech-language pathologist.

37-15-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the board of speech-language pathologists and audiologists provided for in 2-15-1849.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Speech-language pathologist" means a person who practices speech-language pathology and who meets the qualifications set forth in this chapter. A person represents himself to be a speech-language pathologist when he presents himself to the public by any title or description of services or functions that he directly or indirectly performs incorporating the words "speech pathologist", "speech pathology", "speech correctionist", "speech corrections", "speech therapist", "speech therapy", "speech clinician", "speech clinic", "language pathologist", "language pathology", "voice therapist", "voice therapy", "voice pathologist", "voice pathology", "logopedist", "logopedics", "communicologist", "communicology", "aphasiologist", "aphasiology", "phoniatrist", "language therapist", "language clinician", or any similar title or description of services or functions.

(4) "Speech-language pathology aide" means any person meeting the minimum requirements established by the board of speech-language pathologists and audiologists who works directly under the supervision of a licensed speech-language pathologist.

(5) "Audiologist" means a person who practices audiology and who meets the qualifications set forth in this chapter. A person represents himself to be an audiologist when he presents himself to the public by any title or description of services or functions that he directly or indirectly performs incorporating the words "audiologist", "audiology", "audiometrist", "audiometry", "audiological", "audiometrics", "hearing clinician", "hearing clinic", "hearing therapist", "hearing therapy", "hearing center", "hearing aid audiologist", or any similar title or description of services.

(6) "Audiology aide" means any person meeting the minimum requirements established by the board of speech-language pathologists and audiologists who works directly under the supervision of a licensed audiologist.

(7) "Practice of speech-language pathology" means rendering or offering to render a service in speech-language pathology to individuals or groups of individuals who have or are suspected of having communication disorders. These services include:

(a) prevention, identification, measurement, testing, evaluation, prediction, consultation, habilitation, and rehabilitation;

(b) determining the need for augmentative communication systems and providing training in the use of these systems;

(c) planning, directing, conducting, or supervising programs that render or offer to render a service in speech-language pathology;

(d) nondiagnostic pure-tone air conduction, tympanometry, and acoustic reflex screening, limited to a pass/fail determination; and

(e) aural rehabilitation, which includes services and procedures for facilitating adequate receptive and expressive communication in individuals with hearing impairment.

(8) "Practice of audiology" means rendering or offering to render a service in audiology to individuals or groups of individuals who have or are suspected of having hearing disorders. These services include:

(a) prevention, identification, measurement, testing, evaluation, prediction, consultation, habilitation, rehabilitation, instruction, and research;

(b) participating in hearing conservation and hearing aid and assistive listening device evaluation, prescription, preparation, dispensing, and orientation;

(c) fabricating ear molds;

(d) providing auditory training and speech reading;

(e) conducting tests of vestibular function;

(f) evaluating tinnitus;

(g) planning, directing, conducting, or supervising programs that render or offer to render a service in audiology; and

(h) speech or language screening, limited to a pass/fail determination.

(9) "Association" means the Montana speech-language and hearing association.

(10) "ASHA" means the American speech-language and hearing association.

(11) "Unethical conduct" means:

(a) the obtaining of any fee by fraud or misrepresentation;

(b) employing, directly or indirectly, any suspended or unlicensed person to perform any work covered by this chapter unless that person assumes the legal status of a supervised aide;

(c) using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however disseminated or published, which is misleading, deceiving, improbable, or untruthful.

History: En. 66-3902 by Sec. 2, Ch. 543, L. 1975; R.C.M. 1947, 66-3902; amd. Sec. 11, Ch. 22, L. 1979; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 2, Ch. 413, L. 1989.

Compiler's Comments

1989 Amendment: Throughout section changed "speech" to "speech-language"; in (3), at end of first sentence after "who", inserted clause relating to qualifications, at beginning of second sentence, before "presents", inserted clause relating to representing oneself as a speech-language pathologist, after "services" inserted "or functions that he directly or indirectly performs", and after "incorporating the words" substituted current list of services and functions for ""speech pathologist", "speech correctionist", "speech therapist", "speech clinician", "language pathologist", "language therapist", "language clinician", or any similar title or description of services"; in (5), at end of first sentence after "who", inserted clause relating to qualifications, at beginning of second sentence, before "presents", inserted clause relating to representing oneself as an audiologist, after "services" inserted "or functions that he directly or indirectly performs", and after "incorporating the words" substituted current list of services for ""audiologist", "hearing clinician", "hearing therapist" or any similar title or description of services"; in (7), after ""Practice of speech-language pathology" means", substituted language of first sentence relating to rendering of services to persons suspected of having communication disorders for "the application of principles, methods, and procedures for the measurement, testing, evaluation, prediction, counseling, or instruction related to the development and disorders of speech, voice, or language for the purpose of evaluating, preventing, habilitating, rehabilitating, or modifying such disorders and conditions in individuals or groups of individuals" and inserted (7)(a) through (7)(e) listing services included in the practice of speech-language pathology; in (8), after ""Practice of audiology" means", substituted language of first sentence relating to rendering of services to persons suspected of having hearing disorders for "the application of principles, methods, and procedures of measurement, testing, appraisal, prediction, consultation, counseling, and instruction related to hearing and hearing impairment for the purpose of modifying communicative disorders involving speech, language, or auditory function, including auditory behavior related to hearing impairment" and inserted (8)(a) through (8)(h) listing services included in the practice of audiology; and deleted definition of provisionally licensed speech pathologist or audiologist.

37-15-103. Exemptions. (1) Nothing in this chapter prevents a person licensed in this state under any other law from engaging in the profession or business for which he is licensed.

(2) Nothing in this chapter restricts or prevents activities of a speech-language pathology or audiology nature or the use of the official title of the position for which they were employed on the part of a speech-language pathologist or audiologist employed by federal agencies.

(3) Those persons performing activities described in subsection (2) of this section who are not licensed under this chapter must do so solely within the confines of or under the jurisdiction of the organization in which they are employed and may not offer speech-language pathology or audiology services to the public for compensation over and above the salary they receive for performance of their official duties with organizations by which they are employed. However, without obtaining a license under this chapter, these persons may consult or disseminate their research findings and scientific information to other accredited academic institutions or governmental agencies.

They also may offer lectures to the public for a fee without being licensed under this chapter.

(4) Nothing in this chapter restricts activities and services of a student in speech-language pathology or audiology from pursuing a course of study in speech-language pathology or audiology at an accredited or approved college or university or an approved clinical training facility. However, these activities and services must constitute a part of his supervised course of study, and a fee may not accrue directly or indirectly to the student. These persons must be designated by the title "speech-language pathology (or audiology) intern", "speech-language pathology (or audiology) trainee", or a title clearly indicating the training status appropriate to his level of training.

(5) Nothing in this chapter restricts a person from another state from offering speech-language pathology or audiology services in this state if these services are performed for no more than 5 days in any calendar year and if the services are performed in cooperation with a speech-language pathologist or audiologist licensed under this chapter. However, by securing a temporary license from the board subject to limitations as the board may impose, a person not a resident of this state who is not licensed under this chapter but who is licensed under the law of another state that has established licensure requirements at least equivalent to those established by this chapter or who is the holder of the ASHA certificate of clinical competency in speech-language pathology or audiology or its equivalent may offer speech-language pathology or audiology services in this state for no more than 30 days in any calendar year if the services are performed in cooperation with a speech-language pathologist or audiologist licensed under this chapter.

(6) Nothing in this chapter restricts any person holding a class A certificate issued by the conference of executives of American schools of the deaf from performing the functions for which he qualifies.

(7) Nothing in this chapter restricts any person who holds a certificate of registration in this state as a hearing aid dealer from performing those functions for which he qualifies and that are described in Title 37, chapter 16.

(8) Nothing in this chapter exempts an audiologist who sells, dispenses, or fits hearing aids from the licensing requirements or other provisions of Title 37, chapter 16.

History: En. 66-3904 by Sec. 4, Ch. 543, L. 1975; R.C.M. 1947, 66-3904; amd. Sec. 3, Ch. 413, L. 1989.

Compiler's Comments

1989 Amendment: Throughout section changed "speech" to "speech-language"; inserted (8) regarding nonexemption from provisions relating to hearing aid dispensers; and made minor changes in phraseology.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Regulation of hearing aid dispensers, Title 37, ch. 16.

Part 2

Board of Speech-Language Pathologists and Audiologists

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1849.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-15-201. Meetings. (1) The board shall meet at least once a year at a place, day, and hour determined by the board. The board shall also meet at other times and places as the bylaws of the board may provide or by call of the chairman or a majority of the members of the board. A quorum of the board shall consist of the majority of its members, but in no instance may a meeting of three board members who are exclusively speech-language pathologists or exclusively audiologists be considered a quorum.

(2) All meetings of the board for the consideration of and action on matters coming before the board are open to the public except:

(a) matters involving the management of internal affairs of the board may be considered and acted upon by the board in executive meetings under rules prescribed by the board;

(b) sessions to prepare, approve, grade, or administer examinations;

(c) upon request of a person who has failed the licensing examinations and who is appearing to appeal the failure.

History: En. 66-3905 by Sec. 6, Ch. 543, L. 1975; amd. Sec. 14, Ch. 453, L. 1977; amd. Sec. 5, Ch. 531, L. 1977; R.C.M. 1947, 66-3905(1), (4); amd. Sec. 6, Ch. 413, L. 1989.

Compiler's Comments

1989 Amendment: Changed reference to speech pathologist to reference to speech-language pathologist.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Duty of Department to provide facilities, 37-1-101.

Disrupting meeting as disorderly conduct, 45-8-101.

37-15-202. Powers and duties of board and department. (1) The board shall:

(a) administer, coordinate, and enforce the provisions of this chapter;

(b) evaluate the qualifications of each applicant for a license as issued under this chapter and supervise the examination of such applicants;

(c) investigate persons engaging in practices which allegedly violate the provisions of this chapter;

(d) conduct hearings and keep records and minutes as the board considers necessary to an orderly dispatch of business;

(e) adopt rules, including but not limited to those governing ethical standards of practice under this chapter;

(f) make recommendations to the governor and other state officials regarding new and revised programs and legislation related to speech-language pathology or audiology which could be beneficial to the citizens of the state of Montana;

(g) cause the prosecution and enjoinder of all persons violating this chapter, by the complaints of its secretary filed with the county attorney in the county where the violation took place, and incur necessary expenses therefor;

(h) adopt a seal by which the board shall authenticate its proceedings.

(2) Copies of the proceedings, records, and acts of the board, signed by the chairman or secretary of the board and stamped with the seal, shall be prima facie evidence of the validity of such documents.

(3) The board may make rules which are reasonable or necessary for the proper performance of its duties and for the regulation of proceedings before it.

(4) The department may employ persons it considers necessary to carry out the provisions of this chapter.

(5) The department shall prepare a report to the governor as required by law.

History: En. 66-3905 by Sec. 6, Ch. 543, L. 1975; amd. Sec. 14, Ch. 453, L. 1977; amd. Sec. 5, Ch. 531, L. 1977; R.C.M. 1947, 66-3905(3), (5) thru (7); amd. Sec. 6, Ch. 413, L. 1989.

Compiler's Comments

1989 Amendment: Changed "speech pathology" to "speech-language pathology".

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Public records, Title 2, ch. 6.

Allocation for administrative purposes only, 2-15-121.

Quasi-judicial boards, 2-15-124.

Duties of Department, 37-1-101.

Biennial report to Governor and Legislature, 37-1-106.

Duties of boards, 37-1-131.

37-15-203. Compensation and expenses. Each board member shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. 66-3905 by Sec. 6, Ch. 543, L. 1975; amd. Sec. 14, Ch. 453, L. 1977; amd. Sec. 5, Ch. 531, L. 1977; R.C.M. 1947, 66-3905(2); amd. Sec. 19, Ch. 474, L. 1981.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-15-301. License required. (1) A license shall be issued to qualified persons either in speech-language pathology or audiology. A person may be licensed in both areas if he meets the respective qualifications, and in such instances the license fee shall be as though for one license.

(2) No person may practice or represent himself as a speech-language pathologist or audiologist in this state unless he is licensed in accordance with the provisions of this chapter.

History: En. 66-3903 by Sec. 3, Ch. 543, L. 1975; R.C.M. 1947, 66-3903; amd. Sec. 6, Ch. 413, L. 1989.

Compiler's Comments

1989 Amendment: Changed references to speech pathology and speech pathologist to references to speech-language pathology and speech-language pathologist.

37-15-302. Application forms. Application for examination for licensing a speech-language pathologist or audiologist shall be made upon forms prescribed by the board.

History: En. 66-3908 by Sec. 9, Ch. 543, L. 1975; R.C.M. 1947, 66-3908(1); amd. Sec. 6, Ch. 413, L. 1989.

Compiler's Comments

1989 Amendment: Changed reference to speech pathologist to reference to speech-language pathologist.

Cross-References

Standardized forms, 37-1-101.

37-15-303. Qualifications. (1) To be eligible for licensing by the board as a speech-language pathologist or audiologist, the applicant must:

(a) meet the current academic, supervised clinical practicum, and postclassroom sponsored employment requirements of the ASHA;

(b) pass an examination approved by the board.

(2) The board shall determine the subject and scope of the examination.

History: En. 66-3906 by Sec. 7, Ch. 543, L. 1975; amd. Sec. 34, Ch. 101, L. 1977; R.C.M. 1947, 66-3906(part); amd. Sec. 6, Ch. 413, L. 1989.

Compiler's Comments

1989 Amendment: Changed reference to speech pathologist to reference to speech-language pathologist.

Cross-References

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-15-304. Examination. (1) Except as otherwise provided in this chapter, an applicant shall be examined for speech-language pathology or audiology by the board and shall pay to the board, at least 30 days prior to the date of the examination, the examination fee for each examination as prescribed by this chapter.

(2) The board shall examine by written examination given at least twice a year at a time and place and under such supervision as the board may determine. In addition, an oral examination may be required by the board. Standards for acceptable performance shall be determined by the board.

(3) The board may waive the written examination for certification if the applicant has successfully passed the national examination in speech-language pathology or audiology.

(4) The board may examine or direct the applicant to be examined for knowledge in whatever theoretical or applied fields of speech-language pathology or audiology as it considers appropriate. It may also examine the candidate with regard to his professional skills and his judgment in the utilization of speech-language pathology or audiology techniques and methods.

(5) The department shall maintain a permanent record of all examination scores.

(6) The board shall keep an accurate transcript of the oral examination, if any. Transcripts of oral examinations shall be retained by the board for at least 1 year following the date of examination.

(7) An applicant who fails his examination may be reexamined at a subsequent examination upon payment of another examination fee. An applicant who fails two successive examinations may apply for reexamination after 2 years of additional professional experience or training.

History: (1) thru (6)En. 66-3909 by Sec. 10, Ch. 543, L. 1975; Sec. 66-3909, R.C.M. 1947; (7)En. 66-3906 by Sec. 7, Ch. 543, L. 1975; amd. Sec. 34, Ch. 101, L. 1977; Sec. 66-3906, R.C.M. 1947; R.C.M. 1947, 66-3906(part), 66-3909(1) thru (6); amd. Sec. 6, Ch. 413, L. 1989.

Compiler's Comments

1989 Amendment: Changed "speech pathology" to "speech-language pathology".

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public records, Title 2, ch. 6.

Duties of Department, 37-1-101.

37-15-305. Practice pending disposition of application — waiver. (1) A speech-language pathologist or audiologist who holds ASHA certification or equivalent or is licensed in another state and who has made application to the board for a license in this state may perform activities and services of a speech-language pathology or audiology nature without a valid license pending disposition of application.

(2) The board shall waive the examination and grant a license to applicants who present proof of a current license in a state which has standards equivalent to or greater than those of this state.

(3) The board shall waive the examination and grant a license to those who hold the certificate of clinical competence of the American speech-language and hearing association in the area for which they are applying for a license.

(4) The board shall, on presentation and documentation in writing by a petitioner, have the prerogative of granting licensure to an individual who does not have all the formal requirements specified in this chapter. This prerogative shall be used only for unusual or special circumstances and shall be determined by the board in each individual case.

History: En. 66-3908, 66-3909 by Secs. 9, 10, Ch. 543, L. 1975; R.C.M. 1947, 66-3908(3), (6) thru (8), 66-3909(7); amd. Sec. 4, Ch. 413, L. 1989.

Compiler's Comments

1989 Amendment: In three places changed "speech" to "speech-language"; and deleted former (2) that read: "(2) Prior to July 1, 1976, a provisional license may be issued to an individual who holds a bachelor's degree with a major in speech pathology or audiology, who has accumulated 175 clock hours of clinical practicum, and who has worked in this state as a speech pathologist or audiologist for at least 1 academic year. The provisionally licensed speech pathologist or audiologist must work under the direct supervision of a licensed or certified speech pathologist or audiologist. The extent to which direct supervision will be provided for the provisionally licensed speech pathologist or audiologist will be determined by the supervising clinician. Generally, the supervising speech pathologist or audiologist shall provide direct assistance to the provisionally licensed speech pathologist or audiologist at least 4 days per month. Most of the contacts by the supervising speech pathologist or audiologist shall be in person, but other avenues of contact may be made. Those persons granted provisional licensure shall complete the academic, clinical practicum, and examination requirements for licensure within 6 years after July 1, 1975. Twelve quarter hour credits of additional professional training towards licensure qualifications, or any other proposed educational plan that leads to the same goal as presented to and approved by the board, must be obtained every 2 years for renewal of provisional licensure. Provisionally licensed speech pathologists or audiologists who have not attained appropriate eligibility status within 6 years of July 1, 1975, will no longer be eligible to practice speech pathology or audiology in the state of Montana, except for those persons granted certification under subsection (5) of this section, but may work as speech pathology or audiology aides, as defined in this chapter."

37-15-306. Issuance of license. (1) The board shall grant a license to each person who meets the requirements for licensure as prescribed in this chapter, and the department shall issue the license.

(2) The license shall include the dates of issuance and expiration and shall bear a serial number.

(3) The license shall be signed by the secretary of the board under the seal of the board.

History: En. 66-3907 by Sec. 8, Ch. 543, L. 1975; R.C.M. 1947, 66-3907(1) thru (3).

37-15-307. Application and examination fee — license fee — registration fee. The amount of fees prescribed in connection with a license as a speech-language pathologist or audiologist and with registration as a speech-language pathology aide or audiology aide shall be determined by the board each year based on costs and predicted expenditures.

History: En. 66-3910 by Sec. 11, Ch. 543, L. 1975; R.C.M. 1947, 66-3910(1); amd. Sec. 39, Ch. 345, L. 1981; amd. Sec. 1, Ch. 368, L. 1985; amd. Sec. 6, Ch. 413, L. 1989.

Compiler's Comments

1989 Amendment: Changed references to speech pathology and speech pathologist to references to speech-language pathology and speech-language pathologist.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-15-308. Renewal. (1) Each licensed speech-language pathologist or audiologist shall pay to the board the fee for the renewal of his license according to rules adopted by the department.

(2) The department shall notify each person licensed under this chapter relative to the date of expiration of his license and the amount of the renewal fee. This notice must be mailed to each licensed speech-language pathologist or audiologist at least 1 month before the expiration of the license.

(3) Renewal may be made at any time during the 60 days prior to the expiration date by application therefor. A renewal application must be accompanied with documentation satisfactory to the board that the applicant has fulfilled his continuing educational requirements as provided in 37-15-309.

(4) Failure on the part of any licensed person to pay the renewal fee by the expiration date does not deprive him of the right to renew his license, but the fee shall be increased 10% for each month that the payment of the renewal fee is delayed after the expiration date. The maximum fee for delayed renewal shall not exceed twice the normal renewal fee.

(5) Application for renewal following a lapse of 1 year or more shall be subject to review by the board, and the applicant may be requested to complete an examination successfully if the board so determines.

(6) A suspended license is subject to expiration and may be renewed as provided in this section, but such renewal does not entitle the licensee, while the license remains suspended, to engage in the licensed activity or in any other activity or conduct which violates the order or judgment by which the license was suspended.

(7) A license revoked on disciplinary grounds is subject to expiration, and it may not be renewed. If it is reinstated after its expiration, the licensee, as a condition of reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee in effect on the last preceding regular renewal date before the date on which it is reinstated plus the delinquency fee, if any, accrued at the time of its revocation.

(8) A person who fails to renew his license within 2 years after its expiration may not renew it, and it may not be restored, reissued, or reinstated thereafter; but such a person may reapply for and obtain a new license if he meets the requirements of this chapter.

History: En. 66-3907, 66-3910 by Secs. 8, 11, Ch. 543, L. 1975; R.C.M. 1947, 66-3907(4) thru (7), 66-3910(3) thru (7); amd. Sec. 2, Ch. 368, L. 1985; amd. Sec. 5, Ch. 413, L. 1989.

Compiler's Comments

1989 Amendment: In two places changed "speech" to "speech-language"; in (1), before "pay", deleted "on or before October 31 of each year" and at end inserted clause relating to Department rules; in (3) inserted last sentence relating to continuing education requirements; in (8) reduced time for renewing license from 4 years to 2 years after license expiration; and made minor changes in phraseology.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

37-15-309. Continuing education required for renewal. The board shall develop standards and methods of documentation and establish procedures for causing individuals who have been licensed to demonstrate continued education before renewing any license more than twice.

History: En. 66-3907 by Sec. 8, Ch. 543, L. 1975; R.C.M. 1947, 66-3907(9).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-15-310. Deposit of moneys received. All moneys received by the department shall be deposited in the state treasury to the credit of the state special revenue fund for the use of the board and subject to 37-1-101(6).

History: En. 66-3910 by Sec. 11, Ch. 543, L. 1975; R.C.M. 1947, 66-3910(2); amd. Sec. 1, Ch. 277, L. 1983.

37-15-311. Municipal tax prohibited. No license tax shall be imposed upon speech-language pathologists or audiologists by a municipality or any other subdivision of the state.

History: En. 66-3910 by Sec. 11, Ch. 543, L. 1975; R.C.M. 1947, 66-3910(8); amd. Sec. 6, Ch. 413, L. 1989.

Compiler's Comments

1989 Amendment: Changed reference to speech pathologist to reference to speech-language pathologist.

37-15-312. Department to publish list of licensees and registrants. Each year the department shall publish a list of all persons licensed and registered under this chapter, containing their names and addresses and such other information as the board considers advisable. The department shall mail a copy of this list to each person licensed under this chapter, place a copy on file in the secretary of state's office, and furnish copies to the public upon request.

History: En. 66-3907 by Sec. 8, Ch. 543, L. 1975; R.C.M. 1947, 66-3907(8); amd. Sec. 3, Ch. 368, L. 1985.

Cross-References

Prohibition on distribution or sale of mailing lists, 2-6-109.

37-15-313. Registration of aides. Each licensed speech-language pathologist and audiologist shall annually, on or before October 31, register with a board on forms provided by the board all speech-language pathology aides and audiology aides working directly under the supervision of the licensee.

History: En. Sec. 4, Ch. 368, L. 1985; amd. Sec. 6, Ch. 413, L. 1989.

Compiler's Comments

1989 Amendment: Changed references to speech pathology and speech pathologist to references to speech-language pathology and speech-language pathologist.

37-15-314 through 37-15-320 reserved.

37-15-321. Denial, suspension, or revocation of license — reinstatement. (1) The board may refuse to issue or renew a license or may suspend or revoke the license of any licensee if he has been guilty of unprofessional conduct which has endangered or is likely to endanger the health, welfare, or safety of the public. Such unprofessional conduct includes but is not limited to:

(a) obtaining a license by means of fraud, misrepresentation, or concealment of material facts;

(b) being found guilty of unprofessional conduct or having violated ethical standards of practice established pursuant to this chapter;

(c) violating any lawful order or rule of the board;

(d) violating any provision of this chapter.

(2) Where an applicant or licensee has been convicted of a felony or a crime involving moral turpitude, the board may suspend or revoke his license or may decline to issue a license when:

(a) the time for appeal has elapsed;

(b) the judgment of conviction has been affirmed on appeal;

(c) an order granting probation is made suspending the imposition of sentence.

(3) Denial, suspension, or revocation of a license is permissible only after a hearing and procedures which comply with all applicable requirements of the Montana Administrative Procedure Act.

(4) One year after denial, suspension, or revocation of a license, a person may reapply for a license. The board may in its discretion require an examination for reinstatement.

History: En. 66-3911 by Sec. 12, Ch. 543, L. 1975; R.C.M. 1947, 66-3911.

Cross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unethical practices, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

37-15-322. Penalty. A person convicted of violating this chapter shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 66-3912 by Sec. 13, Ch. 543, L. 1975; R.C.M. 1947, 66-3912.

Cross-References

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

37-15-323. Injunction of unlawful practice. The practice of speech-language pathology or audiology in any way other than as defined in this chapter may be enjoined by the district court on petition by the board.

History: En. 66-3913 by Sec. 14, Ch. 543, L. 1975; R.C.M. 1947, 66-3913; amd. Sec. 6, Ch. 413, L. 1989.

Compiler's Comments

1989 Amendment: Changed "speech pathology" to "speech-language pathology".

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

Disciplinary authority of boards — injunctions, 37-1-136.

CHAPTER 16

HEARING AID DISPENSERS

Part 1 — General

37-16-101. Declaration of policy.
37-16-102. Definitions.
37-16-103. Exemptions.

Part 2 — Board of Hearing Aid Dispensers

37-16-201. Meetings — quorum — organization.
37-16-202. Powers and duties.
37-16-203. Compensation of members — expenses.

Part 3 — Regulatory Provisions

37-16-301. Permanent place of business in state necessary — records — notice.
37-16-302. Sale of dispensing business.
37-16-303. Bill of sale — examination by otolaryngologist — notation on receipt that examination not medical opinion.

Part 4 — Licensing

37-16-401. License required.
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37-16-406. Admission of licensees from other states.
37-16-407. Renewal of license — fee.
37-16-408. Deposit of fees and fines.
37-16-409 and 37-16-410 reserved.
37-16-411. Revocation or suspension of license — fines.
37-16-412. Revocation, suspension, or denial — notice and hearing.
37-16-413. Penalty for unlawful practice — injunction.

Part 1

General

37-16-101. Declaration of policy. The selling, dispensing, and fitting of hearing aids is hereby declared to affect the public health and welfare and is subject to regulation and control in the public interest. This chapter shall be liberally construed to carry out the objectives and purposes hereinafter described in accordance with this declaration of policy.

History: En. Sec. 1, Ch. 204, L. 1969; R.C.M. 1947, 66-3001; amd. Sec. 1, Ch. 404, L. 1985.

37-16-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of hearing aid dispensers provided for in 2-15-1850.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "License" means a regular or trainee license.

(4) "Hearing aid" means an instrument or device designed for or represented as aiding or improving defective human hearing and parts, attachments, or accessories of the instrument or device.

(5) "Practice of selling, dispensing, and fitting hearing aids" means the evaluation or measurement of the powers or range of human hearing by means of an audiometer and a visual examination of the ear and canal or by any other means devised and the consequent selection, adaption, sale, dispensing, or fitting of hearing aids intended to compensate for hearing loss,

including eyeglass hearing aids and their fittings, and the making of an impression of the ear and the subsequent selection of a proper ear mold, but does not include batteries, cords, or accessories.

History: En. Sec. 3, Ch. 204, L. 1969; amd. Sec. 292, Ch. 350, L. 1974; R.C.M. 1947, 66-3003; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 4, Ch. 444, L. 1981; amd. Sec. 2, Ch. 404, L. 1985.

37-16-103. Exemptions. (1) This chapter does not apply to a person who is a physician licensed to practice by the state board of medical examiners.

(2) This chapter does not apply to a person while he is engaged in the practice of fitting hearing aids if his practice is part of the academic curriculum of an accredited institution of higher education or part of a program conducted by a public agency.

History: En. Sec. 9, Ch. 204, L. 1969; amd. Sec. 297, Ch. 350, L. 1974; R.C.M. 1947, 66-3009; amd. Sec. 3, Ch. 404, L. 1985.

Part 2

Board of Hearing Aid Dispensers

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1850.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-16-201. Meetings — quorum — organization. (1) The board shall meet at least once each year at a place and time determined by the chairman and at other times and places specified by the chairman to carry out this chapter. Three members constitute a quorum.

(2) Members of the board shall annually designate one member to serve as chairman and another member to serve as secretary-treasurer.

History: En. Sec. 6, Ch. 204, L. 1969; amd. Sec. 295, Ch. 350, L. 1974; R.C.M. 1947, 66-3006; amd. Sec. 5, Ch. 444, L. 1981.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Duty of Department to provide facilities, 37-1-101.

Disrupting meeting as disorderly conduct, 45-8-101.

37-16-202. Powers and duties. The powers and duties of the board are to:

(1) license persons who apply and are qualified to practice the fitting of hearing aids;

(2) establish a procedure to act as a grievance board to receive, investigate, and mediate complaints from any source concerning the activities of persons licensed under this chapter or their agents, whether licensed or not;

(3) suspend or revoke licenses under this chapter;

(4) designate the time and place for examining applicants for license and supervise and administer the examination;

(5) adopt rules necessary to carry out this chapter;

(6) require the periodic inspection and calibration of audiometric testing equipment and carry out periodic inspections of facilities of persons who practice the fitting or selling of hearing aids;

(7) prepare examinations required by the chapter;

(8) initiate legal action to enjoin from operation a person or corporation engaged in the sale, dispensing, or fitting of hearing aids in this state who is not licensed under this chapter.

History: En. Sec. 5, Ch. 204, L. 1969; amd. Sec. 294, Ch. 350, L. 1974; R.C.M. 1947, 66-3005; amd. Sec. 6, Ch. 444, L. 1981; amd. Sec. 4, Ch. 404, L. 1985.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Allocation for administrative purposes only, 2-15-121.

Quasi-judicial boards, 2-15-124.

Duty of Department to administer and grade examinations, 37-1-101.

Duties of boards, 37-1-131.

Disciplinary authority of boards — injunctions, 37-1-136.

37-16-203. Compensation of members — expenses. Each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 20, Ch. 204, L. 1969; amd. Sec. 303, Ch. 350, L. 1974; amd. Sec. 44, Ch. 439, L. 1975; R.C.M. 1947, 66-3020(2); amd. Sec. 12, Ch. 22, L. 1979; amd. Sec. 20, Ch. 474, L. 1981.

Part 3

Regulatory Provisions

37-16-301. Permanent place of business in state necessary — records — notice. (1) A person who is actively engaged in dispensing hearing aids as a business must have a permanent place of business in this state that will be opened to serve the public, having the necessary testing, fitting, and hearing aid accessories needed by the hard-of-hearing public in the wearing of hearing aids. All licensed hearing aid dispensers shall identify their permanent place of business in all advertising public notices and in all consumer correspondence, both written and verbal. More than one licensee may work from a permanent place of business.

(2) The department shall keep a record of the places of practice of persons who hold regular licenses or trainee licenses. A notice required to be given by the board or department to a person who holds a regular or trainee license may be given by mailing it to him at the address last given by him to the department.

(3) All licensed dispensers shall notify the board of any change of address within 30 days of the change. A trainee shall notify the board of any change of address within 10 days of the change.

History: En. Sec. 15, Ch. 204, L. 1969; amd. Sec. 300, Ch. 350, L. 1974; R.C.M. 1947, 66-3015; amd. Sec. 7, Ch. 444, L. 1981; amd. Sec. 5, Ch. 404, L. 1985.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public records, Title 2, ch. 6.

Duties of Department, 37-1-101.

37-16-302. Sale of dispensing business. A business selling, dispensing, or fitting hearing aids may be sold provided the new owners comply with all the provisions of this chapter.

History: En. Sec. 18, Ch. 204, L. 1969; R.C.M. 1947, 66-3018; amd. Sec. 6, Ch. 404, L. 1985.

37-16-303. Bill of sale — examination by otolaryngologist — notation on receipt that examination not medical opinion. (1) Any person who practices the selling, fitting, or dispensing of hearing aids shall deliver to each person supplied with a hearing aid, by him or at his order or direction, a bill of sale which shall contain the seller's signature and show the name and address of his permanent place of business and the number of his license, together with a description of the make and type of the hearing aid furnished and the amount charged, with terms of guarantee, if any. The bill of sale shall also reveal the condition of the hearing device and whether it is new, used, or reconditioned.

(2) (a) Any person practicing the selling, dispensing, or fitting of hearing aids shall, when dealing with a person under 19 years of age, ascertain if the person has been examined by an otolaryngologist within 90 days prior to the fitting and shall obtain his recommendations. If such not be the case, a recommendation to do so must be made to the purchaser and this fact be noted on the receipt.

(b) Any person practicing the selling, dispensing, or fitting of hearing aids shall, when the aid is to be purchased with state funds, ascertain if the person has been examined by a licensed physician within 90 days prior to the fitting and shall obtain his recommendations. If such not be the case, a recommendation to do so must be made to the purchaser and this fact be noted on the receipt.

(3) Such receipt must bear, in no smaller type than the largest used in the body portion, the following: "Any examination(s) or representation(s) made by a licensed hearing aid dispenser in connection with the dispensing, fitting, and selling of this hearing aid(s) is not an examination, diagnosis, or prescription by a person licensed to practice medicine in this state and, therefore, must not be regarded as medical opinion or advice."

History: En. Sec. 8, Ch. 204, L. 1969; R.C.M. 1947, 66-3008; amd. Sec. 7, Ch. 404, L. 1985.

Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

Part 4

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-16-401. License required. A person may not engage in selling, dispensing, or fitting hearing aids or display a sign or in any other way advertise or hold himself out as a person who practices the selling, dispensing, or fitting of hearing aids in Montana unless he holds a current regular or temporary license issued by the department.

History: En. Sec. 7, Ch. 304, L. 1969; amd. Sec. 296, Ch. 350, L. 1974; R.C.M. 1947, 66-3007; amd. Sec. 8, Ch. 404, L. 1985.

37-16-402. Application — qualifications — fee. An applicant for a license shall pay a fee fixed by the board and commensurate with the costs of processing and administering his application and related functions of the board and shall show to the satisfaction of the board that he:

(1) is a person of good moral character;

(2) has an education equivalent to a 4-year course in an accredited high school, has continuously engaged in the practice of selling, fitting, or dispensing hearing aids in Montana during the 3 years preceding the date of application, or holds a current license as an audiologist under Title 37, chapter 15;

(3) is free of contagious or infectious disease.

History: En. Sec. 10, Ch. 204, L. 1969; R.C.M. 1947, 66-3010; amd. Sec. 40, Ch. 345, L. 1981; amd. Sec. 8, Ch. 444, L. 1981; amd. Sec. 9, Ch. 404, L. 1985.

Cross-References

Standardized forms, 37-1-104.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-16-403. Examination — time and place. An applicant for a license who is notified by the department that he has fulfilled the requirements of 37-16-402 shall appear at a time and place designated by the board to be examined by written and practical tests in order to demonstrate that he is qualified to practice the fitting of hearing aids.

History: En. Sec. 11, Ch. 204, L. 1969; amd. Sec. 298, Ch. 350, L. 1974; R.C.M. 1947, 66-3011; amd. Sec. 10, Ch. 404, L. 1985.

37-16-404. Examination — subject areas. The examination provided in 37-16-403 shall consist of a test of knowledge and practical tests of proficiency, where they apply, in the following areas as they pertain to the fitting of hearing aids:

(1) acoustics:
(a) general principles;
(b) the decibel;
(c) hearing and speech;
(2) the human ear:
(a) external;
(b) middle;
(c) inner;
(3) the hearing process;
(4) disorders of hearing:
(a) conductive;
(b) sensorineural;
(c) central;
(d) psychogenic;
(5) audiometry:
(a) pure tone;
(b) theory;
(c) procedures;
(d) speech;
(6) the hearing analysis:
(a) audiogram;
(b) auditory area;

(7) hearing aids:
(a) history;
(b) characteristics;
(c) components;
(8) practical use of the otoscope:
(a) earmold;
(b) impression;
(9) fittings:
(a) hearing aid;
(b) earmold;
(10) delivery and checkup; or
(11) any change as deemed necessary by the board.

History: **En. Sec. 12, Ch. 204, L. 1969; R.C.M. 1947, 66-3012; amd. Sec. 90, Ch. 370, L. 1987.**

37-16-405. Trainee license. (1) An applicant who fulfills the requirements of 37-16-402 and who has not previously applied to take the practical examination under 37-16-403 may apply to the board for a trainee license.

(2) On receiving an application under subsection (1) of this section, accompanied by a fee fixed by the board and commensurate with the cost of administering the license and related functions of the board and verification that the applicant has passed the written portion of the examination with a score of at least 70%, the board shall issue a trainee license which entitles the applicant to engage in a 12-month training period during which he shall:

(a) pass the practical examination administered by the board;

(b) work for a period of 60 days during which he may do the testing necessary for proper selection and fitting of a hearing aid and make necessary impressions, but the delivery and final fitting of the hearing aid must be made by his supervisor; and

(c) work for the balance of the training period during which he may engage in all activities allowed a licensed hearing aid dispenser, but while under supervision of a licensed hearing aid dispenser.

(3) The training period must consist of a continuous 12-month term. Any break in training requires application for another trainee license under such rules as the board may prescribe.

(4) A trainee license may not be issued unless the board has on file an unrevoked statement from a licensed hearing aid dealer accepting responsibility for the trainee. Every licensee supervising a trainee license holder must submit a quarterly report of the trainee's activities and training assignments, on forms furnished by the board. The supervisor is responsible for all hearing aid fittings of the trainee. A supervisor may terminate his responsibilities to the trainee by mailing by certified mail written notice to the board and the trainee.

(5) If a person who holds a trainee license takes and fails to pass the practical examination given within his training period, the board may authorize the department to renew the trainee license for a period ending 30 days after the next examination. In no event may more than two renewals be permitted. The fee for renewal shall be set by the board commensurate with the cost of administering the license and related functions of the board.

(6) A person licensed as an audiologist under the provisions of Title 37, chapter 15, is exempt from the 12-month training period but is required to pass the examinations prescribed in this chapter.

History: En. Sec. 14, Ch. 204, L. 1969; amd. Sec. 299, Ch. 350, L. 1974; R.C.M. 1947, 66-3014; amd. Sec. 41, Ch. 345, L. 1981; amd. Sec. 9, Ch. 444, L. 1981; amd. Sec. 11, Ch. 404, L. 1985.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-16-406. Admission of licensees from other states. When the board determines that another state or jurisdiction has requirements equivalent to or higher than those in effect under this chapter for the practice of dispensing, fitting, and selling hearing aids and that the state or jurisdiction has a program equivalent to or stricter than the program for determining whether applicants under this chapter are qualified to sell, dispense, and fit hearing aids, the board may authorize the department to issue a license to applicants who hold current, unsuspended, and unrevoked licenses to fit, dispense, and sell hearing aids in the other state or jurisdiction. No such applicants for a license under this section are required to submit to or undergo a qualifying examination or the like, other than the payment of fees, if the person complies with all other requirements of this chapter.

History: En. Sec. 19, Ch. 204, L. 1969; amd. Sec. 302, Ch. 350, L. 1974; R.C.M. 1947, 66-3019; amd. Sec. 12, Ch. 404, L. 1985.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-16-407. Renewal of license — fee. (1) A person who practices the fitting of hearing aids shall annually pay to the department a fee as set by the board for a renewal of his license. The fee shall be fixed by the board to be commensurate with board costs in administering licensure and related board functions. The fee shall be increased 10% for each month or major portion thereof that the payment of the renewal fee is delayed after the expiration date. The maximum fee for a delayed renewal shall not exceed twice the normal renewal fee as set by the board. A person applying for renewal whose license was suspended for failure to renew is required to submit to the examinations described in 37-16-403 as a condition of renewal for a 3-year period after suspension.

(2) Each applicant for license renewal must submit evidence showing completion of 4 hours of continuing education completed during the preceding 12 months. The requirements of the continuing education programs are to be determined by the board by rule.

History: En. Sec. 16, Ch. 204, L. 1969; amd. Sec. 301, Ch. 350, L. 1974; amd. Sec. 14, Ch. 215, L. 1975; R.C.M. 1947, 66-3016; amd. Sec. 42, Ch. 345, L. 1981; amd. Sec. 10, Ch. 444, L. 1981; amd. Sec. 13, Ch. 404, L. 1985.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-16-408. Deposit of fees and fines. Fees and fines collected under this chapter, except those collected by a justice's court, shall be deposited in the state special revenue fund for the use of the board, subject to appropriations and 37-1-101(6).

History: En. Sec. 20, Ch. 204, L. 1969; amd. Sec. 303, Ch. 350, L. 1974; amd. Sec. 44, Ch. 439, L. 1975; R.C.M. 1947, 66-3020(1); amd. Sec. 11, Ch. 444, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 14, Ch. 404, L. 1985; amd. Sec. 26, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

37-16-409 and 37-16-410 reserved.

37-16-411. Revocation or suspension of license — fines. A person registered under this chapter may have his license revoked or suspended for a fixed period to be determined by the board or be fined not to exceed $500 per incident for any of the following causes:

(1) being convicted of a felony, subject to chapter 1, part 2 of this title. The record of the conviction or a certified copy from the clerk of the court where the conviction occurred or certification by the judge of the court is conclusive evidence of the conviction, except that if the person has been pardoned by a governor or the president of the United States, the conviction does not constitute grounds for revocation or suspension.

(2) securing a license under this chapter through fraud or deceit or false statements;

(3) the personal use of a false name or alias in the practice of his profession;

(4) violating any of the provisions of this chapter;

(5) obtaining any fee or making any sale by fraud or misrepresentation;

(6) knowingly employing, directly or indirectly, any suspended or unlicensed person to perform any work covered by this chapter;

(7) using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, however disseminated or published, which is improbable, misleading, deceptive, or untruthful;

(8) representing that the services or advice of a person licensed to practice medicine or possessing certification as an audiologist will be used or made available in the selection, fitting, adjustment, maintenance, or repair of hearing aids when that is not true or using the terms "doctor", "clinic", "hearing clinic", "state registered", or other like words, abbreviations, or symbols which tend to connote the medical profession when that use is not accurate;

(9) permitting another to use his license or certificate;

(10) defaming competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations or falsely disparaging the products of competitors in any respect or their business methods, selling prices, values, credit terms, policies, or services;

(11) using any method of advertising prohibited by trade practice rules 1 through 17 of the federal trade commission;

(12) obtaining information concerning the business of a competitor by bribery of an employee or agent of such competitor, by false or misleading statements or representations, by the impersonation of one in authority, or by any other unlawful means;

(13) directly or indirectly giving or offering to give or permitting or causing to be given money or anything of value to any person who advises another

in a professional capacity as an inducement to influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dispenser or influencing persons to refrain from dealing in the products of competitors;

(14) unethical conduct or gross incompetence or negligence in the performance of his duties, including repeated failure to make indicated medical referrals of his customers;

(15) selling a hearing aid to a person who has not been given tests utilizing appropriate established procedures and instrumentation in fitting of hearing aids, except in cases of selling replacement hearing aids.

History: En. Sec. 17, Ch. 204, L. 1969; amd. Sec. 27, Ch. 101, L. 1977; R.C.M. 1947, 66-3017; amd. Sec. 15, Ch. 404, L. 1985.

Cross-References

Duty of Department to investigate unethical conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Unfair trade practices and consumer protection, Title 37, ch. 14.

37-16-412. Revocation, suspension, or denial — notice and hearing. No license issued under this chapter may be suspended, revoked, denied, or renewal denied without notice and opportunity for a hearing as provided under the Montana Administrative Procedure Act.

History: En. Sec. 22, Ch. 204, L. 1969; amd. Sec. 304, Ch. 350, L. 1974; amd. Sec. 28, Ch. 101, L. 1977; R.C.M. 1947, 66-3022; amd. Sec. 12, Ch. 444, L. 1981.

Cross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Reporting disciplinary actions against licensees, 37-1-105.

Disciplinary authority of boards — injunctions, 37-1-136.

37-16-413. Penalty for unlawful practice — injunction. (1) Any person who practices the selling, fitting, or dispensing of hearing aids without a valid license shall be guilty of a misdemeanor and upon conviction be fined not more than $500 or be imprisoned for not more than 90 days, or both.

(2) The board may enforce any provision of this chapter by injunction or by any other appropriate proceeding.

History: En. Sec. 21, Ch. 204, L. 1969; R.C.M. 1947, 66-3021; amd. Sec. 16, Ch. 404, L. 1985.

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

Disciplinary authority of boards — injunctions, 37-1-136.

CHAPTER 17

PSYCHOLOGISTS

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37-17-102. Definitions.
37-17-103. Limitation of license authority.

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Part 2 — Board of Psychologists

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Chapter Cross-References

Psychologist-client privilege, 26-1-807.

Validity of consent to medical treatment, Title 41, ch. 1, part 4.

Psychologists' duty to report child abuse, 41-3-201.

Part 1

General

37-17-101. Purpose. The legislature finds and declares that the practice of psychology in Montana affects the public health, safety, and welfare and should therefore be subject to regulation and control in the public interest in order to protect the public from the unauthorized and unqualified practice of psychology and from unprofessional conduct by persons licensed to practice psychology.

History: **En. Sec. 1, Ch. 73, L. 1971; R.C.M. 1947, 66-3201.**

37-17-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Accredited college or university" means a college or university accredited by the regional accrediting association for institutions of higher learning, such as the northwest association of secondary and higher schools.

(2) "Board" means the board of psychologists provided for in 2-15-1851.

(3) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(4) A person represents himself to be a "psychologist" when he holds himself out to the public by a title or description of services incorporating the words "psychologist", "psychological", "psychologic", or "psychology" and offers to render or renders psychological services defined in subsection (5) of this section to individuals, groups, corporations, or the public, whether or not he does so for compensation or fee.

(5) (a) "Practice of psychology" means the observation, description, interpretation, and modification of human behavior by the application of psychological principles, methods, and procedures for the purpose of eliminating symptomatic, maladaptive, or undesired behavior and improving interpersonal relations, work and life adjustment, personal effectiveness, and mental health.

(b) The practice of psychology includes but is not limited to psychological testing and evaluation or assessment of personal characteristics such as intelligence, personality, abilities, interests, aptitudes, and neuropsychological functioning; counseling, psychoanalysis, psychotherapy, hypnosis, biofeedback, and behavior analysis and therapy; diagnosis and treatment of mental and emotional disorders or disabilities, chemical dependency, substance abuse, and the psychological aspects of physical illness, accident, injury, or disability; and psychoeducational evaluation, therapy, remediation, and consultation.

History: En. Sec. 2, Ch. 73, L. 1971; amd. Sec. 312, Ch. 350, L. 1974; R.C.M. 1947, 66-3202; amd. Sec. 13, Ch. 22, L. 1979; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 5, Ch. 324, L. 1981; amd. Sec. 1, Ch. 347, L. 1987.

37-17-103. Limitation of license authority. Nothing in this chapter shall be construed as permitting psychologists to prescribe drugs, perform surgery, or administer electroconvulsive therapy.

History: En. Sec. 14, Ch. 73, L. 1971; R.C.M. 1947, 66-3214(2).

37-17-104. Exemptions. This chapter does not prevent:

(1) qualified members of other professions, such as physicians, social workers, lawyers, pastoral counselors, or educators, from doing work of a psychological nature consistent with their training if they do not hold themselves out to the public by a title or description incorporating the words "psychology" or "psychologist";

(2) the activities, services, and use of an official title clearly delineating the nature and level of training on the part of a person in the employ of a federal, state, county, or municipal agency or of other political subdivisions or an educational or charitable institution insofar as these activities and services are a part of the duties of his office or position with the agency or institution;

(3) the activities and services of a student, intern, or resident in psychology pursuing a course of study at an accredited university or college or working in a generally recognized training center if these activities and services constitute a part of his supervised course of study;

(4) the activities and services of a person who is not a resident of this state in rendering consulting psychological services in this state when these services are rendered for a period which does not exceed, in the aggregate, 60 days during a calendar year if the person is authorized under the laws of the state or country of his residence to perform these activities and services; however, these persons shall report to the department the nature and extent of the services in this state if they exceed 10 days in a calendar year;

(5) a person authorized by the laws of the state or country of his former residence to perform activities and services, who has recently become a resident of this state and who has applied for a license in this state, from performing such activities and services pending disposition of his application;

(6) the use of the term "social psychologist" by a person who:

(a) has been graduated with a doctoral degree in sociology or social psychology from an institution and whose credits in sociology or social psychology are acceptable by a recognized educational institution;

(b) has passed comprehensive examinations in the field of social psychology as part of the requirement for the doctoral degree or who has had equivalent specialized training in social psychology; and

(c) has filed with the department a statement of facts demonstrating his compliance with this subsection;

(7) the offering of lecture services for a fee by a person exempted from licensing requirements by virtue of his employment;

(8) activities of a psychological nature on the part of a person who is a salaried employee of an accredited academic institution, governmental agency, research laboratory, or business corporation if he is performing the duties for which he is employed by the organization within the confines of the organization.

History: En. Sec. 3, Ch. 73, L. 1971; amd. Sec. 313, Ch. 350, L. 1974; R.C.M. 1947, 66-3203(2); amd. Sec. 14, Ch. 22, L. 1979; amd. Sec. 6, Ch. 324, L. 1981; amd. Sec. 2, Ch. 347, L. 1987.

Part 2

Board of Psychologists

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1851.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-17-201. Meetings — expenses of members — attorney general as board attorney — seal. (1) The board shall hold a regular annual meeting in which it shall select from its members a chairman and a secretary. Other regular meetings shall be held at such times as the rules of the board provide. Special meetings may be held at times considered necessary or advisable by the chairman and the majority of its members or on the request of the governor. Reasonable notice of meetings shall be given in the manner prescribed by the board. The quorum of the board consists of the majority of its members. The department shall keep a record of the board's proceedings.

(2) Each board member shall receive compensation and travel expenses as provided for in 37-1-133.

(3) The attorney general shall act as attorney for the board. He or his representative may sit as an ex officio member of the board in an advisory capacity only.

(4) The board shall adopt an official seal.

History: En. Sec. 5, Ch. 73, L. 1971; amd. Sec. 315, Ch. 350, L. 1974; amd. Sec. 12, Ch. 453, L. 1977; R.C.M. 1947, 66-3205(1), (2), (4), (5); amd. Sec. 21, Ch. 474, L. 1981.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Duties of Attorney General, 2-15-501.

Duty of Department to provide facilities, 37-1-101.

Disrupting meeting as disorderly conduct, 45-8-101.

37-17-202. Powers. (1) The board may make reasonable and necessary rules for the proper performance of its duties and for the regulation of proceedings before it.

(2) In addition to the other powers and duties set forth, the board may:

(a) revoke and suspend licenses;

(b) conduct hearings upon complaints concerning persons licensed under this chapter;

(c) cause the prosecution and enjoinder of all persons violating this chapter, by the complaint of its secretary signed with the county attorney, in the county where the violation took place and incur necessary expenses therefor;

(d) study and review new developments in research, training, and the practice of psychology and make recommendations to the governor and other state officials regarding new and revised programs and legislation related to psychology which could be beneficial to the citizens of the state of Montana.

History: (1)En. Sec. 5, Ch. 73, L. 1971; amd. Sec. 315, Ch. 350, L. 1974; amd. Sec. 12, Ch. 453, L. 1977; Sec. 66-3205, R.C.M. 1947; (2)En. Sec. 7, Ch. 73, L. 1971; Sec. 66-3207, R.C.M. 1947; R.C.M. 1947, 66-3205(3), 66-3207.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Allocation for administrative purposes only, 2-15-121.

Quasi-judicial boards, 2-15-124.

Duties of boards, 37-1-131.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-17-301. License required. A person may not represent himself to be a psychologist or engage in the practice of psychology unless he is licensed under this chapter.

History: En. Sec. 3, Ch. 73, L. 1971; amd. Sec. 313, Ch. 350, L. 1974; R.C.M. 1947, 66-3203(1).

37-17-302. Application — qualifications. (1) Application for examination for licensing a psychologist shall be made on forms prescribed by the board.

(2) The board shall license as a psychologist any person who pays the prescribed fee, passes the prescribed examination, and submits evidence by oath that he:

(a) is a resident of or shows satisfactory evidence of intent to become a resident of this state at the time he is licensed;

(b) is at least 18 years of age;

(c) is of good moral character;

(d) (i) has received a doctoral degree in clinical psychology from an accredited college or university having an appropriate graduate program approved by the American psychological association;

(ii) has received a doctoral degree in psychology from an accredited college or university not approved by the American psychological association and has successfully completed a formal graduate retraining program in clinical psychology approved by the American psychological association; or

(iii) has received a doctoral degree in psychology from an accredited college or university, and whose course of studies meets minimum standards specified in rules by the board; and

(e) has completed at the time of application a minimum of 2 years of experience in the practice, research, or teaching of psychology. One year of this experience shall be postdoctoral.

History: En. Sec. 8, Ch. 73, L. 1971; amd. Sec. 25, Ch. 94, L. 1973; amd. Sec. 317, Ch. 350, L. 1974; R.C.M. 1947, 66-3208(1), (2); amd. Sec. 3, Ch. 347, L. 1987.

Cross-References

Rules for determining residency, 1-1-215.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Nondiscrimination in licensing, 49-3-204.

37-17-303. Examination. (1) The department shall administer examinations to qualified applicants for licensing at least once a year, subject to 37-1-101. The board shall determine the subject and scope of specialized psychological areas and techniques for examination. Examinations may be written, oral, or both. The board shall determine an acceptable level of performance for each examination.

(2) An applicant who fails his first examination may be reexamined at a subsequent examination on the payment of another examination fee. An applicant who fails two successive examinations may apply for reexamination after 1 year of additional professional experience or training.

History: En. Sec. 6, Ch. 73, L. 1971; amd. Sec. 316, Ch. 350, L. 1974; R.C.M. 1947, 66-3206(1), (2); amd. Sec. 4, Ch. 347, L. 1987.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

37-17-304. Admission of licensees from other states. A license without examination may be issued to a psychologist licensed or certified in another state where the licensing or certification requirements are substantially equivalent to the requirements of this chapter or to a psychologist who is a diplomate in good standing of the American board of professional psychology.

History: En. Sec. 8, Ch. 73, L. 1971; amd. Sec. 25, Ch. 94, L. 1973; amd. Sec. 317, Ch. 350, L. 1974; R.C.M. 1947, 66-3208(3).

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-17-305. Issuance of license. The department shall issue a license to each person who meets the requirements for licensure as prescribed in this chapter. The license shall include the dates of issuance and expiration and shall bear a serial number. It shall be signed by the secretary of the board under the seal of the board.

History: En. Sec. 6, Ch. 73, L. 1971; amd. Sec. 316, Ch. 350, L. 1974; R.C.M. 1947, 66-3206(3).

37-17-306. Annual renewal. (1) The license expires on January 1 following the date of its issuance or renewal and is invalid thereafter. The department shall notify each person licensed under this chapter relative to the date of the expiration of his license and the amount of his renewal fee. This notice shall be mailed to each licensed psychologist at his listed address at least 1 month before the expiration of the license.

(2) Renewal may be made by application during the 60 days prior to the expiration date. Failure on the part of a person licensed to pay his renewal fee by the expiration date does not deprive him of the right to renew his license, but the fee shall be increased 10% for each month or major portion thereof that the payment of the renewal fee is delayed after the expiration date. The maximum fee for delayed renewal may not exceed twice the normal renewal fee. Application for renewal following a lapse of 1 year or more will be subject to review by the board, and the applicant may be requested to complete an examination successfully if the board so determines.

History: En. Sec. 6, Ch. 73, L. 1971; amd. Sec. 316, Ch. 350, L. 1974; R.C.M. 1947, 66-3206(4), (5).

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

37-17-307. Fees — deposit of fees. (1) The department shall collect the following fees, none of which is refundable:

(a) application fee;

(b) examination fee, an amount commensurate with the charge of the professional examination service and administrative costs of the department and as set by the board;

(c) certificate fee;

(d) renewal fee.

(2) Renewal certificates shall be secured annually and dated January 2.

(3) Fees received by the department shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 11, Ch. 73, L. 1971; amd. Sec. 1, Ch. 59, L. 1974; amd. Sec. 319, Ch. 350, L. 1971; R.C.M. 1947, 66-3211; amd. Sec. 43, Ch. 345, L. 1981; amd. Sec. 1, Ch. 277, L. 1983.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-17-308. Department to publish list of licensees. The department shall publish yearly a list of psychologists licensed under this chapter. This list shall contain names and addresses and other information the board considers advisable. The department shall mail a copy of this list to each person licensed under this chapter, place a copy on file in the secretary of state's office, and furnish copies to the public on request.

History: En. Sec. 6, Ch. 73, L. 1971; amd. Sec. 316, Ch. 350, L. 1974; R.C.M. 1947, 66-3206(6).

Cross-References

Prohibition on distribution or sale of mailing lists, 2-6-109.

37-17-309 and 37-17-310 reserved.

37-17-311. Denial or revocation of license — grounds — notice and hearing. (1) The board may refuse or revoke a license applied for or issued under this chapter or apply other disciplinary sanctions on finding that the person to whom the license was issued:

(a) has been guilty of fraud or deceit in securing the license or a renewal;

(b) is using or has used a narcotic or an alcoholic beverage to an extent that the use impairs his ability to perform the work of a professional psychologist with safety to the public; or

(c) has been guilty of unprofessional conduct as defined by the rules adopted by the board.

(2) The board may not revoke or refuse to issue or renew a license for any cause other than failure to pay fees unless the person is given notice and opportunity for a hearing before the board.

History: En. Sec. 9, Ch. 73, L. 1971; amd. Sec. 318, Ch. 350, L. 1974; R.C.M. 1947, 66-3209; amd. Sec. 7, Ch. 324, L. 1981; amd. Sec. 5, Ch. 347, L. 1987.

Cross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Nondiscrimination in licensing, 49-3-204.

37-17-312. Penalty. Any person who violates any of the provisions of this chapter shall be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding 6 months or by a fine not exceeding $500, or by both.

History: En. Sec. 13, Ch. 73, L. 1971; R.C.M. 1947, 66-3213.

Cross-References

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

37-17-313. Injunction for unlawful practice. The practice of psychology in any way other than as defined in this chapter may be enjoined by the district court on petition by the board. In any such proceeding, it shall not be necessary to show that any person is individually injured by the actions complained of. If the respondent is found to have so practiced, the court shall enjoin him from so practicing unless and until he has been duly licensed. Procedure in such cases shall be the same as in any other injunction suit. The remedy by injunction hereby given is in addition to criminal prosecution and punishment.

History: En. Sec. 14, Ch. 73, L. 1971; R.C.M. 1947, 66-3214(1).

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

Disciplinary authority of boards — injunctions, 37-1-136.

37-17-314. Immunity from liability. There is no liability on the part of and no cause of action may arise against a psychologist for a statement made in good faith in reporting another psychologist's apparent violation of the provisions of this chapter or rules adopted by the board.

History: En. Sec. 7, Ch. 347, L. 1987.

Cross-References

Licensing investigation and review — record access, 37-1-135.

Health care practitioners — nonliability for peer review, Title 37, ch. 2, part 2.

Pharmacists — nonliability for peer review, 37-7-1101.

Physical therapists — nonliability for reporting violations to licensing Board, 37-11-320.

CHAPTER 18

VETERINARY MEDICINE

Part 1 — General

37-18-101. Definitions.
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37-18-311. Refusal, suspension, or revocation of license — right to notice and hearing.
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Part 4 — Licensing—Veterinary Technology (Repealed. Sec. 7, Ch. 96, L. 1981)

Part 5 — Remedies for Violation

37-18-501. Penalty.
37-18-502. Injunction.

Chapter Cross-References

Veterinarian as member of Board of Health and Environmental Sciences, 2-15-2104.

Rules on veterinary practice to be included in standards for horseracing, 23-4-104.

Professional service corporations, Title 35, ch. 4.

Part 1

General

37-18-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of veterinary medicine provided for in 2-15-1852.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

History: En. 66-2201.1 by Sec. 205, Ch. 350, L. 1974; R.C.M. 1947, 66-2201.1; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 2, Ch. 43, L. 1985.

37-18-102. Veterinary medicine defined. (1) A person is considered practicing veterinary medicine when he does any of the following:

(a) represents himself as or is engaged in the practice of veterinary medicine in any of its branches, either directly or indirectly;

(b) uses words, titles, or letters in this connection or on a display or advertisement or under circumstances so as to induce the belief the person using them is engaged in the practice of veterinary medicine. This use is prima facie evidence of the intention to represent oneself as engaged in the practice of veterinary medicine in any of its branches.

(c) diagnoses, prescribes, or administers a drug, medicine, appliance, application, or treatment of whatever nature or performs a surgical operation or manipulation for the prevention, cure, or relief of a pain, deformity, wound, fracture, bodily injury, physical condition, or disease of animals;

(d) instructs, demonstrates, or solicits by a notice, sign, or other indication, with contract either express or implied, or otherwise, with or without the necessary instruments, for the administration of biologics or medicines or animal disease cures for the prevention and treatment of disease of animals and remedies for the treatment of internal parasites in animals;

(e) performs a manual or laboratory procedure on livestock for the diagnosis of pregnancy, sterility, or infertility for remuneration or hire;

(f) performs acupuncture, ova or embryo transfer, or dentistry on animals;

(g) instructs others, except those covered under the provisions of 37-18-104(4), for compensation, in any manner how to perform any acts which constitute the practice of veterinary medicine.

(2) Nothing in subsection (1)(e) of this section shall in any way be construed to prohibit the pregnancy testing by any person of his own farm animals or by his employees regularly employed in the conduct of his business or by other persons whose services are rendered gratuitously.

(3) Nothing in this section shall be construed as modifying, amending, altering, or repealing any part of 37-18-104.

History: (1)En. Sec. 9, Ch. 82, L. 1913; re-en. Sec. 3225, R.C.M. 1921; re-en. Sec. 3225, R.C.M. 1935; amd. Sec. 7, Ch. 90, L. 1955; amd. Sec. 1, Ch. 191, L. 1965; amd. Sec. 211, Ch. 350, L. 1974; amd. Sec. 7, Ch. 135, L. 1975; Sec. 66-2209, R.C.M. 1947; (2)En. Sec. 2, Ch. 191, L. 1965; Sec. 66-2209.1, R.C.M. 1947; (3)En. Sec. 3, Ch. 191, L. 1965; Sec. 66-2209.2, R.C.M. 1947; R.C.M. 1947, 66-2209(1), 66-2209.1, 66-2209.2; amd. Sec. 3, Ch. 43, L. 1985; amd. Sec. 1, Ch. 650, L. 1989.

Compiler's Comments

1989 Amendment: In (1)(g) substituted reference to 37-18-104(4) for reference to 37-18-104(3). Amendment effective May 11, 1989.

37-18-103. Repealed. Sec. 7, Ch. 96, L. 1981.

History: En. 66-2213 by Sec. 1, Ch. 135, L. 1975; R.C.M. 1947, 66-2213(2).

37-18-104. Exemptions — rules. (1) This chapter does not apply to:

(a) veterinarians in the performance of their official duties, either civil or military, in the service of the United States unless they engage in the practice of veterinary medicine in a private capacity;

(b) laboratory technicians and veterinary research workers, as distinguished from veterinarians, in the employ of this state or the United States and engaged in labors in laboratories under the direct supervision of the board of livestock, Montana state university, or the United States;

(c) lawfully qualified veterinarians from other states or a foreign country meeting legally licensed and registered Montana veterinarians in this state in consultation;

(d) a veterinarian residing on a border of a neighboring state and authorized under the laws thereof to practice veterinary medicine therein, who is actually called to attend cases in this state but who does not open an office or appoint a place to meet patients or receive calls in this state, if veterinarians licensed and registered in this state are extended a like privilege to engage in the practice of veterinary medicine to the same extent in the neighboring state;

(e) the employment as assistants to veterinarians licensed and registered under this chapter of veterinary medical students who have successfully completed 3 years of the professional curriculum in veterinary medicine at a college having educational standards equal to those approved by the American veterinary medical association and authorized by law to confer degrees; or

(f) a person advising with respect to or performing acts that the board defines by rule as accepted livestock management practices.

(2) The operations known and designated as castrating or dehorning of cattle, sheep, horses, and swine are not the practice of veterinary medicine within the meaning of this chapter.

(3) (a) Embryo transfers may be performed, under the supervision of a licensed veterinarian, by individuals who attest to the board that they possess a combination of 3 years' education, experience, and training in that procedure.

(b) Exemption under subsection (3)(a) remains in effect until testing and certification procedures, as determined by board rule, are implemented on or before July 1, 1991. At a minimum, board rules must address:

(i) minimum education requirements;

(ii) minimum requirements of practical experience;

(iii) continuing education requirements;

(iv) limitations on practices and procedures that may be performed by certified individuals;

(v) the use of specific drugs necessary for safe and proper practice of certified procedures;

(vi) content and administration of the certification test, including written and practical testing;

(vii) application and reexamination procedures;

(viii) conduct of certified individuals, including rules for suspension, revocation, and denial of certification; and

(ix) establishment of an advisory committee. The committee:

(A) must consist of:

(I) one member of the board who is a veterinarian;

(II) one member of the Montana state university reproductive physiology department;

(III) one member representing the Montana stockgrowers association animal health committee;

(IV) one member representing the Montana woolgrowers association;

(V) one reproductive specialist with practical experience in embryo transfers; and

(VI) a veterinarian who is a member of the American college of theriogenologists;

(B) shall make recommendations regarding the testing and certification procedures. The committee may not adopt rules.

(C) in cooperation with the board, shall conduct a study of the practice of bovine pregnancy testing and ovine pregnancy testing with the use of ultrasound equipment. The study must include but is not limited to:

(I) federal laws governing the practice of pregnancy testing;

(II) education and experience requirements for the practice of pregnancy testing; and

(III) pregnancy testing by nonveterinarians;

(D) terminates July 1, 1991.

(4) This chapter does not prohibit a person from caring for and treating his own farm animals or being assisted in this treatment by his full-time employees, as defined in 2-18-601, employed in the conduct of his business or by other persons whose services are rendered gratuitously in case of emergency.

(5) This chapter does not prohibit the selling of veterinary remedies and instruments by a registered pharmacist at his regular place of business.

History: En. Sec. 11, Ch. 82, L. 1913; re-en. Sec. 3227, R.C.M. 1921; re-en. Sec. 3227, R.C.M. 1935; amd. Sec. 9, Ch. 90, L. 1955; amd. Sec. 213, Ch. 350, L. 1974; amd. Sec. 8, Ch. 135, L. 1975; R.C.M. 1947, 66-2211; amd. Sec. 4, Ch. 43, L. 1985; amd. Sec. 2, Ch. 650, L. 1989.

Compiler's Comments

1989 Amendment: Inserted (1)(f) relating to livestock management practices; inserted (3) regarding performance of embryo transfers and Board rules; and in (4), before "treating", inserted "caring for and", before "employees" inserted "full-time", and after "employees" inserted "as defined in 2-18-601". Amendment effective May 11, 1989.

Applicability: Section 9, Ch. 650, L. 1989, provided: "The provisions of [this act] clarify existing authority of the board of veterinary medicine to regulate veterinary practices. The provisions of Title 2, chapter 8, part 2, and 5-4-207 do not apply to [this act]."

Part 2

Board of Veterinary Medicine

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1852.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-18-201. Organization — meetings. (1) A board member shall receive a certificate of appointment from the governor.

(2) The board shall annually elect from its members a president, vice-president, and secretary-treasurer and shall hold at least two regular meetings each year. At a meeting four members of the board constitute a quorum. If a member of the board, without cause, absents himself from two of its regular meetings consecutively, his office is vacant.

History: En. Sec. 2, Ch. 82, L. 1913; re-en. Sec. 3218, R.C.M. 1921; re-en. Sec. 3218, R.C.M. 1935; amd. Sec. 2, Ch. 90, L. 1955; amd. Sec. 206, Ch. 350, L. 1974; amd. Sec. 5, Ch. 135, L. 1975; R.C.M. 1947, 66-2202(1), (2).

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Duty of Department to provide facilities, 37-1-101.

Disrupting meeting as disorderly conduct, 45-8-101.

37-18-202. Powers of board and department — examinations — prosecutions. (1) The board may adopt rules and orders necessary for the performance of its duties, including but not limited to:

(a) development of continuing professional education requirements and exceptions therefrom;

(b) prescribing of forms for application for examination and license; and

(c) preparation of examinations.

(2) The department shall, subject to 37-1-101, supervise the examination of applicants for license to practice veterinary medicine, obtain the services of professional examination agencies instead of its own preparation of examinations, and grant and revoke licenses.

(3) The department may employ attorneys, subject to the approval of the attorney general, to assist county attorneys in prosecutions brought under this chapter in the respective district courts of the state or to assist the attorney general in representing the board before the supreme court.

History: En. Sec. 2, Ch. 82, L. 1913; re-en. Sec. 3218, R.C.M. 1921; re-en. Sec. 3218, R.C.M. 1935; amd. Sec. 2, Ch. 90, L. 1955; amd. Sec. 206, Ch. 350, L. 1974; amd. Sec. 5, Ch. 135, L. 1975; R.C.M. 1947, 66-2202(3), (4); amd. Sec. 3, Ch. 96, L. 1981; amd. Sec. 3, Ch. 650, L. 1989.

Compiler's Comments

1989 Amendment: In introductory clause of (1), after "duties", inserted "including but not limited to"; inserted (1)(a) regarding continuing education; and made minor changes in phraseology, form, and punctuation. Amendment effective May 11, 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Allocation for administrative purposes only, 2-15-121.

Quasi-judicial boards, 2-15-124.

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

Duties of boards, 37-1-131.

37-18-203. Compensation and expenses of members — department records of board proceedings and licensees. (1) Each member of the board is entitled to receive compensation and travel expenses as provided for in 37-1-133.

(2) The department shall keep complete records of the board's proceedings and of its receipts and disbursements and a full and accurate list of persons licensed and registered by the board. These records are public records and are at all times open to public inspection.

History: En. Sec. 3, Ch. 82, L. 1913; re-en. Sec. 3219, R.C.M. 1921; re-en. Sec. 3219, R.C.M. 1935; amd. Sec. 3, Ch. 90, L. 1955; amd. Sec. 126, Ch. 147, L. 1963; amd. Sec. 27, Ch. 177, L. 1965; amd. Sec. 26, Ch. 93, L. 1969; amd. Sec. 207, Ch. 350, L. 1974; amd. Sec. 38, Ch. 439, L. 1975; amd. Sec. 3, Ch. 531, L. 1977; R.C.M. 1947, 66-2203(1), (2); amd. Sec. 22, Ch. 474, L. 1981.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public records, Title 2, ch. 6.

Prohibition on distribution and sale of mailing lists, 2-6-109.

Duties of Department, 37-1-101.

Licensing investigation and review — record access, 37-1-135.

Part 3

Licensing — Veterinary Medicine

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-18-301. License required. A person may not practice veterinary medicine or veterinary surgery in this state unless licensed and registered as required by this chapter, nor may a person practice veterinary medicine or surgery whose authority to practice is suspended or revoked by the board.

History: En. Sec. 9, Ch. 82, L. 1913; re-en. Sec. 3225, R.C.M. 1921; re-en. Sec. 3225, R.C.M. 1935; amd. Sec. 7, Ch. 90, L. 1955; amd. Sec. 1, Ch. 191, L. 1965; amd. Sec. 211, Ch. 350, L. 1974; amd. Sec. 7, Ch. 135, L. 1975; R.C.M. 1947, 66-2209(2).

37-18-302. Application — qualification — fee. A person desiring to begin the practice of veterinary medicine or veterinary surgery in this state or who desires to hold himself out to the public as a practitioner of veterinary medicine or veterinary surgery, except as provided in 37-18-104, shall make application to the department for a license to do so. The application shall be on a form furnished by the department and shall be accompanied by satisfactory evidence of the good moral character of the applicant and shall present evidence of his having graduated in and received a degree from a legally authorized veterinary medical school having educational standards equal to those approved by the American veterinary medical association. On application, a photostatic copy of the diploma of the applicant shall be submitted to the department for inspection and verification. The photostatic copy remains the property of the department. A person applying for a license to practice shall pay to the department a nonrefundable fee commensurate with the costs of the examinations and set annually by the board.

History: En. Sec. 4, Ch. 82, L. 1913; amd. Sec. 1, Ch. 150, L. 1919; re-en. Sec. 3220, R.C.M. 1921; re-en. Sec. 3220, R.C.M. 1935; amd. Sec. 4, Ch. 90, L. 1955; amd. Sec. 127, Ch. 147, L. 1963; amd. Sec. 7, Ch. 168, L. 1971; amd. Sec. 208, Ch. 350, L. 1974; R.C.M. 1947, 66-2204(part); amd. Sec. 1, Ch. 431, L. 1979; amd. Sec. 5, Ch. 341, L. 1981.

Cross-References

Standardized forms, 37-1-104.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Nondiscrimination in licensing, 49-3-204.

37-18-303. Examination — temporary permit pending examination. (1) Subject to 37-1-101, the board shall by means of examination, either oral, written, or practical or a combination of oral, written, or practical as the board determines, ascertain the professional qualifications for license of applicants under this part. An investigation under reciprocity arrangements may replace examination for licensees from other states under 37-18-304. The department shall issue a license to all who are found to be, in the judgment of the board, competent to practice. A license may not be issued to a person who is not found by the examination or investigation to be competent.

(2) The examination shall be held when determined necessary by the board, but not less frequently than once each year at a time and place specified by the board. The examination shall cover theory and practice, pharmacology and therapeutics, animal sanitation, surgery, communicable diseases,

and other subjects chosen by the board which are ordinarily included in the curriculum of a school of veterinary medicine recognized and approved by the American veterinary medical association.

(3) The department shall consecutively number applications received, note on each the disposition made of it, and preserve them for reference and shall number consecutively licenses issued.

(4) Applicants must achieve a grade of 70% in all subjects in order to obtain a license. An applicant who has failed an examination may apply to be reexamined at a subsequent examination and shall pay another application fee commensurate with the costs of the examinations and set annually by the board and shall take another complete examination in all subjects.

(5) An applicant for examination may, in the discretion of the board, be given a temporary permit to practice veterinary medicine prior to taking the examination if the applicant is employed by and working under the supervision of and in the same office with a veterinarian licensed under this part. The temporary permit is valid only until the date of the next examination. Under no circumstances may a second temporary permit be issued to the same person. A temporary permit may not be issued to a person who has failed an examination given under this section.

History: En. Sec. 4, Ch. 82, L. 1913; amd. Sec. 1, Ch. 150, L. 1919; re-en. Sec. 3220, R.C.M. 1921; re-en. Sec. 3220, R.C.M. 1935; amd. Sec. 4, Ch. 90, L. 1955; amd. Sec. 127, Ch. 147, L. 1963; amd. Sec. 7, Ch. 168, L. 1971; amd. Sec. 208, Ch. 350, L. 1974; R.C.M. 1947, 66-2204(part); amd. Sec. 2, Ch. 431, L. 1979; amd. Sec. 4, Ch. 96, L. 1981.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

37-18-304. Reciprocity. (1) The board may make arrangement with similar boards in the several states, insofar as practicable, whereby due credit for state and territorial licenses may be allowed in this state to the licensees of these boards who desire to secure a license to practice veterinary medicine in this state and by which licensees of the board in this state may secure credit for license issued by this board when the licensees desire to secure a license to practice in another state or territory. No arrangement may be made under this section which may lower the standard of practice of veterinary medicine in this state. The board may, if necessary, require an examination of applicants for a license from other states after a careful consideration of the credentials from these states. The board shall establish methods and procedures for investigation of applicants for a license by reciprocity.

(2) No license may be issued as a result of reciprocity between the states to an applicant unless he has been lawfully and continuously in practice as a licensed veterinarian for at least 1 year in the state from which he applies immediately preceding the date of his application for a license to practice in this state.

History: En. Sec. 8, Ch. 82, L. 1913; re-en. Sec. 3224, R.C.M. 1921; re-en. Sec. 3224, R.C.M. 1935; amd. Sec. 6, Ch. 90, L. 1955; amd. Sec. 210, Ch. 350, L. 1974; R.C.M. 1947, 66-2208(2).

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Licensing investigation and review — record access, 37-1-135.

37-18-305. License — issuance and contents. (1) The board shall, at the conclusion of a regular examination or after investigation under the reciprocity arrangements of 37-18-304 if in its judgment the applicant is qualified, authorize the department to issue a license to practice veterinary medicine.

(2) Every license granted shall be issued under seal and shall be signed by the president and secretary-treasurer of the board and shall state that the licensee has given satisfactory evidence of fitness as to age, character, veterinary medical education, and other matters required by law and that after full examination, or investigation under reciprocity arrangements, he has been found qualified to practice.

History: En. Sec. 7, Ch. 82, L. 1913; re-en. Sec. 3223, R.C.M. 1921; re-en. Sec. 3223, R.C.M. 1935; amd. Sec. 5, Ch. 90, L. 1955; amd. Sec. 209, Ch. 350, L. 1974; amd. Sec. 6, Ch. 135, L. 1975; R.C.M. 1947, 66-2207(1), (2).

37-18-306. Display of license and certificate. A person may not practice veterinary medicine in this state without possessing and displaying prominently in his principal office a license and a current and valid certificate of registration issued under this part.

History: En. Sec. 8, Ch. 82, L. 1913; re-en. Sec. 3224, R.C.M. 1921; re-en. Sec. 3224, R.C.M. 1935; amd. Sec. 6, Ch. 90, L. 1955; amd. Sec. 210, Ch. 350, L. 1974; R.C.M. 1947, 66-2208(1).

37-18-307. Renewal — fee — continuing education — automatic renewal for military personnel. (1) A person licensed to practice veterinary medicine in this state shall procure from the department before November 1 annually his certificate of registration. The certificate shall be issued by the department on the payment of a fee fixed by the board and on presentation of evidence satisfactory to the board that the licensee has complied with continuing education requirements established by the board. The board may waive, relax, or suspend continuing education requirements or particular program requirements for applicants who cannot fulfill those requirements because of individual hardship. New licensees who secure licenses by examination shall be granted a renewal the first year without attending the educational programs. The certificate is prima facie evidence of the right of the holder to practice veterinary medicine in this state during the time for which it is issued.

(2) Failure of a person licensed to procure a certificate of registration before November 1, annually, constitutes a forfeiture of the license held by the person. A person who has thus forfeited his license may have it restored to him by making written application for restoration within 1 year of the forfeiture, setting forth the reasons for failure to procure the certificate of registration at the time specified and accompanied by payment of the registration fee provided for in this section and an additional restoration fee as the board requires and by presentation of evidence satisfactory to the board that he has fulfilled all continuing education requirements to the date of application for restoration. The person making application for restoration of license within 1 year of its forfeiture is not required to submit to examination.

(3) Notwithstanding any other provisions in this chapter, a person licensed who enters or is called to active duty by a branch of the armed services of the United States is entitled to receive automatic registration of his license during the period of his duty with the armed services. However, within

1 year after release or discharge from duty in the armed services he shall procure a certificate of renewal from the department and pay the regular fee. Failure to procure the certificate of renewal within 1 year after release or discharge is the equivalent of a failure to procure a certificate of registration before November 1 of any year, and the same forfeiture and restoration requirements apply.

(4) A person licensed shall at all times have his residence and office address on file with the department.

History: En. Sec. 7, Ch. 82, L. 1913; re-en. Sec. 3223, R.C.M. 1921; re-en. Sec. 3223, R.C.M. 1935; amd. Sec. 5, Ch. 90, L. 1955; amd. Sec. 209, Ch. 350, L. 1974; amd. Sec. 6, Ch. 135, L. 1975; R.C.M. 1947, 66-2207(3) thru (5); amd. Sec. 44, Ch. 345, L. 1981; amd. Sec. 5, Ch. 43, L. 1985; amd. Sec. 4, Ch. 650, L. 1989.

Compiler's Comments

1989 Amendment: In second sentence of (1), after "fixed", deleted "annually" and after "licensee" substituted "has complied with continuing education requirements established" for "in the year preceding the application for renewal, attended an educational program approved" and at beginning of third sentence, after "may", substituted "waive, relax, or suspend continuing education requirements or particular program requirements for applicants who cannot fulfill those requirements because of individual hardship" for "authorize the department to issue renewals, but not consecutive renewals, on a showing satisfactory to the board that attendance at the educational programs was unavoidably prevented"; near end of second sentence of (2), after "fulfilled", substituted "all" for "the" and after "requirements" substituted "to the date of application for restoration" for "of all licensees recited above"; and made minor changes in phraseology and punctuation. Amendment effective May 11, 1989.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-18-308. Deposit of money. Money received under this chapter shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 3, Ch. 82, L. 1913; re-en. Sec. 3219, R.C.M. 1921; re-en. Sec. 3219, R.C.M. 1935; amd. Sec. 3, Ch. 90, L. 1955; amd. Sec. 126, Ch. 147, L. 1963; amd. Sec. 27, Ch. 177, L. 1965; amd. Sec. 26, Ch. 93, L. 1969; amd. Sec. 207, Ch. 350, L. 1974; amd. Sec. 38, Ch. 439, L. 1975; amd. Sec. 3, Ch. 531, L. 1977; R.C.M. 1947, 66-2203(3); amd. Sec. 1, Ch. 277, L. 1983.

37-18-309 and 37-18-310 reserved.

37-18-311. Refusal, suspension, or revocation of license — right to notice and hearing. (1) The board may, with respect to the practice of veterinary medicine, either refuse to grant a license or a certificate of registration or suspend or revoke a license and certificate of registration on any of the following grounds:

(a) fraud or deception in procuring the license;

(b) publication or use of an untruthful or improper statement or representation with the view of deceiving the public or a client or customer in connection with the practice of veterinary medicine;

(c) conviction of a felony as shown by a certified copy of the record of the court of conviction, subject to chapter 1, part 2, of this title;

(d) habitual intemperance in the use of intoxicating liquors or habitual addiction to the use of morphine, cocaine, or other habit-forming drugs or, subject to chapter 1, part 2, of this title, conviction of a violation of a federal or state law relating to narcotic drugs;

(e) unprofessional conduct, as defined by rule of the board, manifestly disqualifying the licensee from practicing veterinary medicine;

(f) malpractice, including failure to furnish to the board on written application by it a report or information relating thereto;

(g) employment of unlicensed persons to perform work which under this chapter can lawfully be done only by persons licensed to practice veterinary medicine;

(h) fraud or dishonest conduct in applying or reporting diagnostic biological tests or in issuing health certificates;

(i) failure to keep one's premises in a clean and sanitary condition;

(j) violation of this part or of the rules or orders of the board;

(k) revocation by proper authorities for any of the above reasons of a license issued by another state.

(2) The board may not refuse to issue a license or certificate of registration or suspend or revoke a license and certificate of registration for any cause unless the person accused has been given notice and a public hearing by the board.

History: En. Sec. 10, Ch. 82, L. 1913; re-en. Sec. 3226, R.C.M. 1921; re-en. Sec. 3226, R.C.M. 1935; amd. Sec. 8, Ch. 90, L. 1955; amd. Sec. 212, Ch. 350, L. 1974; amd. Sec. 18, Ch. 101, L. 1977; R.C.M. 1947, 66-2210; amd. Sec. 5, Ch. 650, L. 1989.

Compiler's Comments

1989 Amendment: At beginning of (1)(e) deleted "immoral", after "unprofessional" deleted "or dishonorable", and after "conduct" inserted "as defined by rule of the board"; and at beginning of (1)(f) deleted "gross". Amendment effective May 11, 1989.

Cross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-18-312 reserved.

37-18-313. Municipal license fee prohibited. No license fee or license tax may be imposed upon a person who practices veterinary medicine, as a condition to the practice of his profession, by any municipality or other political subdivision of the state, including a local government with self-governing powers.

History: En. Sec. 7, Ch. 650, L. 1989.

Compiler's Comments

Effective Date: Section 10, Ch. 650, L. 1989, provided that this section is effective May 11, 1989.

Cross-References

General county licensing authority, Title 7, ch. 21, part 21.

Municipal licensing authority, Title 7, ch. 21, part 41.

Part 4

Licensing — Veterinary Technology (Repealed. Sec. 7, Ch. 96, L. 1981)

Part Compiler's Comments

Histories of Repealed Sections:

37-18-401. En. 66-2213 by Sec. 1, Ch. 135, L. 1975; R.C.M. 1947, 66-2213(3); amd. Sec. 3, Ch. 431, L. 1979.

37-18-402. En. 66-2213 by Sec. 1, Ch. 135, L. 1975; R.C.M. 1947, 66-2213(4), (6).

37-18-403. En. 66-2213 by Sec. 1, Ch. 135, L. 1975; R.C.M. 1947, 66-2213(5); amd. Sec. 45, Ch. 345, L. 1981.

37-18-404. En. 66-2213 by Sec. 1, Ch. 135, L. 1975; R.C.M. 1947, 66-2213(7).

37-18-405. En. 66-2213 by Sec. 1, Ch. 135, L. 1975; R.C.M. 1947, 66-2213(8), (9); amd. Sec. 46, Ch. 345, L. 1981.

37-18-406 through 37-18-410 reserved.

37-18-411. En. 66-2214 by Sec. 2, Ch. 135, L. 1975; amd. Sec. 20, Ch. 101, L. 1977; R.C.M. 1947, 66-2214.

Part 5

Remedies for Violation

Part Cross-References

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

37-18-501. Penalty. A person practicing veterinary medicine within this state, as defined in this chapter, without first having obtained a license to practice and being registered as required by this chapter or after his license to practice has been suspended or revoked or contrary to the provisions of this chapter in any manner is guilty of a misdemeanor for each violation of the provisions of this chapter or for each act relating to the practice of veterinary medicine in this state and upon conviction shall be punished by a fine of not less than $200 or more than $500, or by imprisonment in the county jail for not less than 30 days or more than 6 months, or by both such fine and imprisonment. Any person convicted a second time for any violation of this chapter shall be punished by both such fine and imprisonment. The district court has jurisdiction of all prosecutions brought hereunder.

History: En. Sec. 12, Ch. 82, L. 1913; re-en. Sec. 3228, R.C.M. 1921; re-en. Sec. 3228, R.C.M. 1935; amd. Sec. 10, Ch. 90, L. 1955; amd. Sec. 19, Ch. 101, L. 1977; R.C.M. 1947, 66-2212; amd. Sec. 5, Ch. 96, L. 1981.

37-18-502. Injunction. The board or any person may bring an action in the district court to enjoin any person who is not licensed from engaging in the practice of veterinary medicine unless otherwise exempted under 37-18-104(4). If the court finds that the defendant is violating or threatening to violate any provision of Title 37, chapter 18, it shall enter an order restraining him from the violation, without regard to any criminal provisions of Title 37, chapter 18.

History: En. 66-2215 by Sec. 3, Ch. 135, L. 1975; R.C.M. 1947, 66-2215; amd. Sec. 6, Ch. 96, L. 1981; amd. Sec. 6, Ch. 650, L. 1989.

Compiler's Comments

1989 Amendment: Substituted reference to 37-18-104(4) for reference to 37-18-104(3). Amendment effective May 11, 1989.

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

Disciplinary authority of boards — injunctions, 37-1-136.

CHAPTER 19

MORTICIANS AND FUNERAL DIRECTORS

Part 1 — General

37-19-101. Definitions.

Part 2 — Board of Morticians

37-19-201. Organization — compensation and expenses of members.

37-19-202. Meetings — quorum — rulemaking power.

Part 3 — Licensing of Morticians and Funeral Directors

37-19-301. Funeral director's license — renewal — fee.
37-19-302. License required for practice of mortuary science — qualifications of applicants.
37-19-303. Mortician's license — application fee.
37-19-304. Issuance of intern's license — license fee — issuance of mortician's license on completion of internship.
37-19-305. Reciprocity.
37-19-306. Annual renewal of mortician's license — fee — suspension for nonrenewal.
37-19-307. Deposit of money received.
37-19-308 through 37-19-310 reserved.
37-19-311. Refusal, suspension, or revocation of mortician's or funeral director's license — fine.
37-19-312. Suspension or revocation of license — right to notice and hearing.
37-19-313 and 37-19-314 reserved.
37-19-315. Funeral costs — rules on disclosure.
37-19-316. Continuing education requirements.

Part 4 — Licensing of Mortuaries

37-19-401. License required — display of license — renewal — penalty for late renewal.
37-19-402. Operator's license requirements — facility inspections — transfer of license to new facility.
37-19-403. Power of board to set facility standards — inspection — fees.
37-19-404. Suspension, revocation of mortuary license.

Part 5 — Remedies for Violation

37-19-501. Penalty provision.

Chapter Cross-References

Liability for cremated remains, 35-21-304.

Cadavers and autopsies, Title 50, ch. 21.

Part 1

General

37-19-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of morticians provided for in 2-15-1853.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Embalming" means the preservation and disinfection of the dead human body by application of chemicals, externally, internally, or both.

(4) "Funeral directing" includes:

(a) supervising funerals, including the making of preneed or at-need contractual arrangements for funerals;

(b) preparing dead bodies for burial, other than by embalming;

(c) maintaining a mortuary for the preparation, disposition, or care of dead human bodies; and

(d) the holding out to the public that one is a funeral director or undertaker.

(5) "Mortuary science" is the profession or practice of funeral directing and embalming.

(6) A "mortician" is a person licensed under this chapter to practice mortuary science.

(7) A "mortuary" is a place of business used for the care and preparation for burial or transportation of dead human bodies or a place where a person represents himself as engaged in the profession of mortuary science or funeral directing.

History: En. Sec. 1, Ch. 41, L. 1963; amd. Sec. 260, Ch. 350, L. 1974; R.C.M. 1947, 66-2701; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 298, L. 1989.

Compiler's Comments

1989 Amendment: In (4)(a) inserted "including the making of preneed or at-need contractual arrangements for funerals". Amendment effective March 24, 1989.

Part 2

Board of Morticians

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1853.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-19-201. Organization — compensation and expenses of members. The board shall elect a chairman, secretary-treasurer, and other necessary officers. Board members are entitled to receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 3, Ch. 41, L. 1963; amd. Sec. 262, Ch. 350, L. 1974; amd. Sec. 42, Ch. 439, L. 1975; amd. Sec. 4, Ch. 531, L. 1977; R.C.M. 1947, 66-2703; amd. Sec. 23, Ch. 474, L. 1981.

37-19-202. Meetings — quorum — rulemaking power. The board shall hold such meetings as may be necessary. Three members constitute a quorum for the transaction of business. The board may adopt and enforce rules to carry out the purposes of this chapter.

History: En. Sec. 4, Ch. 41, L. 1963; R.C.M. 1947, 66-2704.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Allocation for administrative purposes only, 2-15-121.

Quasi-judicial boards, 2-15-124.

Duty of Department to provide facilities, 37-1-101.

Duties of boards, 37-1-131.

Disrupting meeting as disorderly conduct, 45-8-101.

Part 3

Licensing of Morticians and Funeral Directors

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-19-301. Funeral director's license — renewal — fee. The practice of funeral directing by anyone who does not hold a funeral director's license or a mortician's license issued by the department is prohibited. A person licensed to practice funeral directing on June 1, 1963, is entitled to an annual renewal of his license on payment of a renewal fee to the department on July 1 of each year. The amount of the annual renewal license fee shall be set by the board. A funeral director's license may not be issued to a person who is not licensed by the board of embalmers and funeral directors to practice funeral directing on June 1, 1963.

History: En. Sec. 7, Ch. 41, L. 1963; amd. Sec. 264, Ch. 350, L. 1974; amd. Sec. 11, Ch. 215, L. 1975; R.C.M. 1947, 66-2707; amd. Sec. 47, Ch. 345, L. 1981.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-19-302. License required for practice of mortuary science — qualifications of applicants. (1) The practice of embalming or mortuary science by anyone who does not hold a mortician's license issued by the board is prohibited. A person 18 years of age or older wishing to practice mortuary science in this state must apply to the board on the form and in the manner prescribed by the board.

(2) To qualify for a mortician's license, a person must:

(a) be of good moral character;

(b) present evidence of having satisfactorily completed 90 quarter credits or the equivalent of study at an accredited college or university;

(c) in addition to the 90 quarter credits or the equivalent of study required in subsection (2)(b), have graduated with a diploma from an accredited college of mortuary science;

(d) pass an examination prescribed by the board; and

(e) serve a 1-year internship under the supervision of a licensed mortician in a licensed mortuary in Montana after passing the examination provided for in subsection (2)(d).

(3) A person who fails the examination required in subsection (2)(d) may retake it under conditions prescribed by rule of the board.

History: En. Sec. 8, Ch. 41, L. 1963; amd. Sec. 9, Ch. 168, L. 1971; amd. Sec. 265, Ch. 350, L. 1974; R.C.M. 1947, 66-2708; amd. Sec. 4, Ch. 378, L. 1981; amd. Sec. 1, Ch. 510, L. 1985.

Cross-References

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-19-303. Mortician's license — application fee. A person possessing the necessary qualifications may apply to the department for a license and on payment of an application fee, as set by the board, may take the examination prescribed by the board. The examination shall be held on the second Wednesday of July each year in Helena and at such other times and places as the board considers necessary.

History: En. Sec. 9, Ch. 41, L. 1963; amd. Sec. 266, Ch. 350, L. 1974; amd. Sec. 12, Ch. 215, L. 1975; R.C.M. 1947, 66-2709; amd. Sec. 48, Ch. 345, L. 1981.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-19-304. Issuance of intern's license — license fee — issuance of mortician's license on completion of internship. An applicant who passes the examination provided for in 37-19-302 shall, upon payment of a license fee prescribed by the board, be granted an intern mortician's license to practice mortuary science under the supervision of a licensed mortician in a licensed mortuary in Montana and, upon completion of 1 year's internship and payment of the annual license fee, may apply for and receive a mortician's license.

History: **En. Sec. 10, Ch. 41, L. 1963; R.C.M. 1947, 66-2710; amd. Sec. 49, Ch. 345, L. 1981; amd. Sec. 2, Ch. 510, L. 1985.**

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-19-305. Reciprocity. If a person holding á license entitling him to practice mortuary science in another state applies for a Montana mortician's license, the board may waive the examination and internship requirements if it finds that the standards and requirements of the state in which the applicant is licensed are equal to or exceed those of Montana and if a reciprocal agreement is required by the other state, it has a reciprocal agreement with Montana.

History: **En. Sec. 12, Ch. 41, L. 1963; R.C.M. 1947, 66-2712; amd. Sec. 5, Ch. 378, L. 1981.**

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-19-306. Annual renewal of mortician's license — fee — suspension for nonrenewal. (1) The annual license fee for a mortician's license must be postmarked before July 1 of the assessment year. The amount of the annual renewal fee shall be set by the board.

(2) Failure to pay the annual renewal fee results in automatic suspension of the license. The license may be reinstated by the payment of unpaid renewal fees plus a penalty prescribed by the board.

History: **En. Sec. 11, Ch. 41, L. 1963; amd. Sec. 267, Ch. 350, L. 1974; amd. Sec. 13, Ch. 215, L. 1975; R.C.M. 1974, 66-2711; amd. Sec. 50, Ch. 345, L. 1981.**

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-19-307. Deposit of money received. Money collected by the department under this chapter shall be deposited for the use of the board, subject to 37-1-101(6).

History: **En. Sec. 6, Ch. 41, L. 1963; amd. Sec. 263, Ch. 350, L. 1974; R.C.M. 1947, 66-2706.**

37-19-308 through 37-19-310 reserved.

37-19-311. Refusal, suspension, or revocation of mortician's or funeral director's license — fine. (1) The board may refuse to grant, may suspend, or may revoke a mortician's or funeral director's license for any of the following reasons:

(a) if the applicant or licensee obtained the license by fraud or misrepresentation, either in the application for the license or in passing the examination;

(b) if the applicant or licensee has violated any section of this chapter or any rule of the state, district, or local board of health governing the disposition of dead human bodies or any rule of the board regulating the professions of mortuary science or funeral directing or the operation of a mortuary;

(c) if the licensee has participated in any scheme in the nature of a burial association or burial certificate plan:

(i) which does not properly protect the rights of the public;

(ii) where there is any element of fraud; or

(iii) where there is contained any agreement or provision that deprives heirs, next of kin, or any other authorized person freedom of choice as to the services or merchandise used in connection with a funeral or the freedom of choice as to which funeral directors or morticians shall be employed; or

(d) if the applicant or licensee violates rules adopted by the board which define unprofessional conduct on the part of applicants and licensees.

(2) The board may impose an administrative fine of not more than $1,000 per incident for any violation that could result in the suspension or revocation of a mortician's or funeral director's license. Any fine collected must be deposited in the state general fund.

History: En. Sec. 14, Ch. 41, L. 1963; R.C.M. 1947, 66-2714; amd. Sec. 6, Ch. 378, L. 1981; amd. Sec. 3, Ch. 510, L. 1985; amd. Sec. 2, Ch. 298, L. 1989.

Compiler's Comments

1989 Amendment: Inserted (2) allowing imposition of an administrative fine and providing for deposit in the state general fund; and made minor changes in form and phraseology. Amendment effective March 24, 1989.

Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

37-19-312. Suspension or revocation of license — right to notice and hearing. No action to suspend, revoke, or cancel a license may be taken by the board until the accused has been given notice and a hearing on the charges. If, at the hearing, the board finds the charges true, it may revoke or suspend the license of the accused person.

History: En. Sec. 15, Ch. 41, L. 1963; amd. Sec. 268, Ch. 350, L. 1974; R.C.M. 1947, 66-2715.

Cross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

37-19-313 and 37-19-314 reserved.

37-19-315. Funeral costs — rules on disclosure. The board shall adopt rules requiring mortuaries to disclose in writing to all customers a complete itemized list of all funeral costs and complete information regarding the need for embalming.

History: En. Sec. 7, Ch. 378, L. 1981.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-19-316. Continuing education requirements. The board may establish by rule continuing education programs and continuing education requirements. Compliance with continuing education requirements may be used as a condition of continued licensure. In adopting rules and individual orders regarding continuing education, the board in its discretion:

(1) may use or rely upon guidelines and pronouncements of recognized educational and professional associations;

(2) may prescribe the content, duration, and organization of courses;

(3) shall take into account the accessibility to applicants of such continuing education as it may require; and

(4) shall avoid any impediments to interstate practice that may result from differences in continuing education requirements in other states.

History: En. Sec. 8, Ch. 378, L. 1981.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 4

Licensing of Mortuaries

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-19-401. License required — display of license — renewal — penalty for late renewal. (1) An operating mortuary must be licensed by the board. The license must be displayed in a conspicuous place.

(2) A mortuary license expires on June 30 of each year and may be renewed upon payment of a fee set by the board.

(3) The board may set a penalty for late renewal of a mortuary license.

History: En. Sec. 13, Ch. 41, L. 1963; R.C.M. 1947, 66-2713(part); amd. Sec. 3, Ch. 298, L. 1989.

Compiler's Comments

1989 Amendment: Inserted (2) providing for a license expiration date and a renewal fee; and inserted (3) allowing a late renewal penalty. Amendment effective March 24, 1989.

37-19-402. Operator's license requirements — facility inspections — transfer of license to new facility. (1) The operation of a mortuary is prohibited by anyone not holding a mortician's or funeral director's license.

(2) A license to operate a new mortuary facility in Montana may be issued only if the proposed mortuary facility meets standards for operating mortuaries adopted by the board.

(3) (a) An applicant for a license to operate a new mortuary shall send to the department a written and verified application on a form prescribed by the board. The application must be accompanied by an initial inspection fee.

(b) The department shall inspect the proposed new mortuary and report its findings to the board.

(4) The board shall grant a license if the department determines that the proposed new facility meets the standards adopted by the board and will be

operated by a person who has been issued a mortician's or a funeral director's license.

(5) The board may grant a temporary license to a mortuary until the initial inspection is completed.

(6) A mortuary license may be transferred from one facility to another only when the proprietor of a licensed facility terminates services at the licensed facility and commences services at a new facility. The new facility must be inspected and must meet standards for operating mortuaries.

(7) A mortuary may be inspected by members of the board or their representatives during business hours.

History: **En. Sec. 13, Ch. 41, L. 1963; R.C.M. 1947, 66-2713(4); amd. Sec. 4, Ch. 298, L. 1989.**

Compiler's Comments

1989 Amendment: Inserted (2) through (4) relating to licensure of new mortuary facilities; inserted (5) allowing temporary licensure pending inspection; inserted (6) regarding transfer of a mortuary license; and inserted (7) relating to mortuary inspection during business hours. Amendment effective March 24, 1989.

37-19-403. Power of board to set facility standards — inspection — fees. (1) The board may adopt rules prescribing reasonable standards for operating mortuaries, including minimum requirements for drainage, ventilation, and instruments. The board may inspect the premises of a mortuary establishment to determine if rules are complied with. Inspections are at the discretion of the board and may be without notice. An initial inspection is mandatory.

(2) The board may charge the operator an inspection fee, including an initial inspection fee, to be set at the discretion of the board. Fees must be commensurate with costs.

History: **En. Sec. 13, Ch. 41, L. 1963; R.C.M. 1947, 66-2713(part); amd. Sec. 51, Ch. 345, L. 1981; amd. Sec. 5, Ch. 298, L. 1989.**

Compiler's Comments

1989 Amendment: At end of (1) inserted "An initial inspection is mandatory"; in (2), after "inspection fee", inserted "including an initial inspection fee" and at end inserted "Fees must be commensurate with costs"; and made minor changes in phraseology. Amendment effective March 24, 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Duties of boards, 37-1-131.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-19-404. Suspension, revocation of mortuary license. A mortuary license may be suspended or revoked upon proof of:

(1) noncompliance of board rules relating to the operation of mortuaries;

(2) violation of any of the laws or rules of the state, district, or local board of health governing the disposition of dead human bodies;

(3) violation of any rule of the board regulating the practice of mortuary science and funeral directing; or

(4) nonpayment of renewal fees.

History: **En. Sec. 13, Ch. 41, L. 1963; R.C.M. 1947, 66-2713(3); amd. Sec. 6, Ch. 298, L. 1989.**

Compiler's Comments

1989 Amendment: Inserted (4) that read: "(4) nonpayment of renewal fees"; and made minor changes in form. Amendment effective March 24, 1989.

Cross-References

Liability for cremated remains, 35-21-304.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Cadavers and autopsies, Title 50, ch. 21.

Part 5

Remedies for Violation

37-19-501. Penalty provision. A person who violates this chapter is guilty of a misdemeanor.

History: En. Sec. 17, Ch. 41, L. 1963; R.C.M. 1947, 66-2717.

Cross-References

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

Misdemeanor penalty when none specified, 46-18-212.

CHAPTER 20

PHYSICIAN ASSISTANTS-CERTIFIED

Part 1 — General

37-20-101. Qualifications of supervising physician and physician assistant-certified.
37-20-102. Insurance requirement.
37-20-103. Limitations on authority conferred — exception.
37-20-104. Penalty — enforcement.

Part 2 — Board of Medical Examiners

37-20-201. Duties of board of medical examiners — compensation and expenses of members.
37-20-202. Adoption of rules.

Part 3 — Utilization Plans

37-20-301. Utilization plan required — contents — approval.
37-20-302. Utilization plan approval fee — renewal of approval — renewal fee.
37-20-303. Exemptions from approval requirement.

Part 4 — Regulation of Practice

37-20-401. Definitions.
37-20-402. Criteria for approval of physician assistant-certified.
37-20-403. Physician assistant-certified as agent of supervising physician.
37-20-404. Prescribing and dispensing authority — discretion of supervising physician on limitation of authority.
37-20-405. Billing.
37-20-406. Liaison to board.

Chapter Cross-References

Limits on liability for emergency care rendered at scene of accident or emergency, 27-1-714.

General provisions relating to health care practitioners, Title 37, ch. 2.

Emergency medical services, Title 50, ch. 6.

Health care information, Title 50, ch. 16.

Part 1

General

Part Cross-References

Duty of physician's assistant to report violations of Montana Elder Abuse Prevention Act, 53-5-511.

37-20-101. Qualifications of supervising physician and physician assistant-certified. (1) Each supervising physician named in the utilization plan required by 37-20-301 shall:

(a) possess a current, unrestricted license to practice medicine in this state;

(b) submit a statement to the Montana state board of medical examiners that, in his opinion, the physician assistant-certified to be employed is of good character and is both mentally and physically able to perform the duties of a physician assistant-certified described in the utilization plan;

(c) submit a statement to the board that he will exercise supervision over the physician assistant-certified in accordance with any rules adopted by the board and will retain professional and legal responsibility for the care and treatment of his patients; and

(d) submit detailed information to the board regarding the physician's professional background, medical education, internship and residency, continuing education received, membership in state and national medical associations, hospital and staff privileges, and such other information as the board may require.

(2) Each physician assistant-certified named in the utilization plan required by 37-20-301 shall meet the criteria for approval as a physician assistant-certified as provided in 37-20-402.

History: En. Sec. 3, Ch. 380, L. 1981; amd. Sec. 9, Ch. 97, L. 1989.

Compiler's Comments

1989 Amendment: In (1), in three places, substituted "physician assistant-certified" for "assistant" or "physician's assistant"; and substituted language in (2) concerning criteria for approval for former (2) and (3) that read: "(2) Except as provided in subsection (3), each physician's assistant named in the utilization plan required by 37-20-301 shall:

(a) be of good character;

(b) be a graduate of a physician's assistant training program approved by the American medical association;

(c) have taken an examination recognized by the national commission on physicians' assistants and received a score satisfactory to the board;

(d) hold a current certification by the national commission on physicians' assistants; and

(e) submit to the board detailed information on the applicant's history, education, and experience and such other information as the board may require.

(3) In lieu of the requirements of subsections (2)(b), (2)(c), and (2)(d) the physician's assistant may be a graduate of an approved medical school as defined in 37-3-102 and pass an examination approved by the board."

Cross-References

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Licensing of physicians, Title 37, ch. 3, part 3.

Unsworn falsification to authorities, 45-7-203.

Nondiscrimination in licensing, 49-3-204.

37-20-102. Insurance requirement. A physician assistant-certified may not perform any service unless he has insurance from liability for his errors, omissions, or actions to the limits required by the hospital's governing authority.

History: En. Sec. 8, Ch. 380, L. 1981; amd. Sec. 10, Ch. 97, L. 1989.

Compiler's Comments

1989 Amendment: Substituted "physician assistant-certified" for "physician's assistant"; and made minor change in phraseology.

Cross-References

Professional liability insurance, Title 33, ch. 9.

37-20-103. Limitations on authority conferred — exception. Except as provided in 37-10-102, nothing in this chapter may be construed to authorize a physician assistant-certified to perform those functions and duties specifically delegated by law to persons licensed as optometrists as defined under Title 37, chapter 10.

History: En. Sec. 10, Ch. 380, L. 1981; amd. Sec. 11, Ch. 97, L. 1989.

Compiler's Comments

1989 Amendment: Substituted "physician assistant-certified" for "physician's assistant".

37-20-104. Penalty — enforcement. (1) Any person who employs a physician assistant-certified or holds himself out to be a physician assistant-certified without the approval of the Montana state board of medical examiners is guilty of a misdemeanor and is punishable as provided in 46-18-212.

(2) In addition to seeking any criminal penalty available under this section, the board may withdraw its approval of any utilization plan previously approved which is applicable to any supervising physician or physician assistant-certified who:

(a) acts in violation of this section;

(b) obtained the approval of the board by fraud;

(c) acts in a manner contrary to the terms of the utilization plan; or

(d) violates any of the applicable provisions of this chapter or rules of the board adopted thereunder.

(3) The board may enforce the provisions of this section by the remedy of injunction.

History: En. Sec. 5, Ch. 380, L. 1981; amd. Sec. 12, Ch. 97, L. 1989.

Compiler's Comments

1989 Amendment: In (1) and (2) substituted "physician assistant-certified" for "physician's assistant"; and in (1), before "without the approval", substituted "physician assistant-certified" for "qualified physician's assistant".

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

Part 2

Board of Medical Examiners

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1841.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

Board of Medical Examiners, Title 37, ch. 3, part 2.

37-20-201. Duties of board of medical examiners — compensation and expenses of members. The Montana state board of medical examiners provided for in 2-15-1841 shall administer the provisions of this chapter under such procedure as it considers advisable and may adopt reasonable rules to carry out the provisions of this chapter. Each member of the board shall receive the compensation and travel expenses provided for in 37-3-206 while engaged in the active and necessary discharge of his duties under this chapter.

History: En. Sec. 1, Ch. 380, L. 1981.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Allocation for administrative purposes only, 2-15-121.

Quasi-judicial boards, 2-15-124.

Duties of boards, 37-1-131.

37-20-202. Adoption of rules. The board of medical examiners shall adopt administrative rules to implement the provisions of this chapter that:

(1) address the issues of supervision and direction limitations and requirements;

(2) address the issue of protocols for interaction of medical personnel with differing responsibilities;

(3) specify that a physician may not utilize more than one physician assistant-certified unless he can demonstrate to the board the ability to supervise more than one assistant adequately;

(4) address other considerations pertinent to the approval of physician assistant-certified utilization plans and locum tenens utilization plans, and the health care needs of the public.

History: En. Sec. 9, Ch. 380, L. 1981; amd. Sec. 13, Ch. 97, L. 1989.

Compiler's Comments

1989 Amendment: In (3) substituted "physician assistant-certified" for "physician's assistant"; and in (4) substituted "physician assistant-certified" for "physicians' assistants" and inserted "and locum tenens utilization plans". Amendment effective March 15, 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Duty of boards to adopt rules on conduct, 37-1-121.

Part 3

Utilization Plans

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-20-301. Utilization plan required — contents — approval. (1) A physician, office, firm, state institution, or professional service corporation may not employ or make use of the services of a physician assistant-certified in the practice of medicine, as defined in 37-3-102, and a physician assistant-certified may not be employed or practice as a physician assistant-certified unless the physician assistant-certified:

(a) is supervised by a licensed physician;

(b) has been approved by the Montana state board of medical examiners; and

(c) has received board approval of a physician assistant-certified utilization plan.

(2) A physician assistant-certified utilization plan must set forth in detail the following information:

(a) the name and qualifications of the supervising physician, as provided in 37-20-101, and the name and approval number of the physician assistant-certified;

(b) the nature and location of the physician's medical practice;

(c) the duties to be delegated to the physician assistant-certified and the location in which those duties are to be performed;

(d) the name and qualifications of a second physician meeting the requirements of 37-20-101 to serve in the place of the supervising physician in the event that the supervising physician is unable to supervise the physician assistant-certified temporarily;

(e) necessary guidelines describing the intended availability of the supervising or alternate physician for consultation by the physician assistant-certified; and

(f) other information the board may consider necessary.

(3) The board shall approve the utilization plan if it finds that the duties to be delegated to the physician assistant-certified are:

(a) assigned by the supervising physician;

(b) within the scope of the training, knowledge, experience, and practice of the supervisory physician; and

(c) within the scope of the training, knowledge, education, and experience of the physician assistant-certified.

(4) A supervising physician and a physician assistant-certified may submit a new or additional utilization plan to the board for approval without reestablishing the criteria set out in 37-20-402, as long as the information requirements of subsection (2) have been met and the appropriate fee provided for in 37-20-302(1) has been paid.

(5) A utilization plan may provide that a physician assistant-certified be allowed to furnish services on a locum tenens basis at a location other than the physician assistant-certified's primary place of practice for a period not to exceed 30 calendar days. A locum tenens utilization plan may be approved by a single board member.

History: **En. Sec. 2, Ch. 380, L. 1981; amd. Sec. 14, Ch. 97, L. 1989.**

Compiler's Comments

1989 Amendment: Throughout section changed "physician's assistant" to "physician assistant-certified"; in (1)(a), after "physician", deleted "and unless such employment or use"; at beginning of (1)(c) inserted "has received board approval of a"; in (2)(a) inserted reference to name and approval number of the physician assistant-certified; inserted (2)(e) relating to availability for consultation; inserted (2)(f) regarding other information the Board may consider necessary; inserted (4) regarding submission of new or additional plan; inserted (5) relating to locum tenens utilization plans; and made minor changes in arrangement and phraseology.

Cross-References

Professional service corporations, Title 35, ch. 4.

37-20-302. Utilization plan approval fee — renewal of approval — renewal fee. (1) Every physician, office, firm, or professional service corporation proposing to employ a physician assistant-certified shall pay to the board a utilization plan approval fee in an amount set by the board, not exceeding $50. Payment must be made when the utilization plan is submitted to the board and is not refundable.

(2) Approval of every physician assistant-certified utilization plan expires 1 year from the date of approval and is invalid thereafter. The department of commerce shall notify each physician, office, firm, or professional corporation and physician assistant-certified named in a utilization plan of the date of expiration of board approval at least 1 month prior to the expiration of approval.

(3) Renewal of approval shall be granted by the board under such circumstances as would justify original approval of a utilization plan and upon payment by the employing physician, office, firm, or professional service corporation of a renewal fee in an amount to be set by the board, not to exceed $50.

(4) Every physician, office, firm, or professional service corporation proposing to employ a physician assistant-certified on a locum tenens basis shall pay to the board a locum tenens utilization plan fee in an amount set by the board, not to exceed $50.

(5) Fees received by the department must be deposited in the state special revenue fund for use by the board in the administration of this chapter, subject to 37-1-101(6).

History: En. Sec. 4, Ch. 380, L. 1981; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 15, Ch. 97, L. 1989.

Compiler's Comments

1989 Amendment: Throughout section changed "physician's assistant" to "physician assistant-certified"; and inserted (4) regarding locum tenens utilization plan fee.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Professional service corporations, Title 35, ch. 4.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-20-303. Exemptions from approval requirement. This chapter does not require the approval of a physician assistant-certified utilization plan or locum tenens utilization plan with respect to any acts within the professional competence of a person licensed under the provisions of Title 37, chapters 3 through 17, 31, or 32.

History: En. Sec. 6, Ch. 380, L. 1981; amd. Sec. 16, Ch. 97, L. 1989.

Compiler's Comments

1989 Amendment: Near beginning substituted "physician assistant-certified" for "physician's assistant" and inserted "or locum tenens utilization plan".

Part 4

Regulation of Practice

Part Cross-References

Coverage required for services provided by physician assistants-certified, 33-22-114.

37-20-401. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the Montana state board of medical examiners established in 2-15-1841.

(2) "Locum tenens" means the temporary provision of services within the scope of practice of a physician assistant-certified.

(3) "Physician assistant-certified" means a member of a health care team, approved by the board, who provides medical services that may include examination, diagnosis, prescription of medications, and treatment, as approved by the board, under the supervision of a physician licensed by the board.

(4) "Protocol" means the proper relationship between a physician assistant-certified and other health care practitioners and the manner of their interaction.

History: **En. Sec. 1, Ch. 97, L. 1989.**

37-20-402. Criteria for approval of physician assistant-certified. A person may not be approved as a physician assistant-certified in this state unless he:

(1) is of good moral character;

(2) is a graduate of a physician assistant training program approved by the American medical association's committee on allied health education and accreditation;

(3) has taken and successfully passed an examination recognized by the national commission on the certification of physician assistants;

(4) holds a current certificate from the national commission on the certification of physician assistants; and

(5) has submitted to the board detailed information on his history, education, and experience.

History: **En. Sec. 2, Ch. 97, L. 1989.**

37-20-403. Physician assistant-certified as agent of supervising physician. (1) In establishing protocol, a physician assistant-certified must be considered the agent of the supervising physician with regard to all duties delegated to the physician assistant-certified under the utilization plan. A health care provider shall consider the instructions of a physician assistant-certified as being the instructions of the supervising physician as long as the instructions concern the duties delegated to the physician assistant-certified under the utilization plan.

(2) The supervising physician and the physician assistant-certified are responsible for making available a copy of the approved utilization plan to all other health care practitioners with whom they reasonably believe they will interact on a regular basis.

(3) Nothing in this chapter may be construed to conflict with the provisions of 37-3-322.

History: **En. Sec. 3, Ch. 97, L. 1989.**

Compiler's Comments

Effective Date: Section 23, Ch. 97, L. 1989, provided in part: "[Sections 3, 4, 6, and 13 . . .] [codified as 37-20-403, 37-20-404, 37-20-406, and 37-20-202] are effective on passage and approval." Approved March 15, 1989.

37-20-404. Prescribing and dispensing authority — discretion of supervising physician on limitation of authority. (1) A physician assistant-certified may prescribe, dispense, and administer drugs to the extent authorized by the board by rule, by the utilization plan, or both. The prescribing, dispensing, and administration of drugs are also subject to the authority of the supervising physician, and the supervising physician in his discretion may impose additional limitations on the prescribing and dispensing authority granted by the board.

(2) All dispensing activities allowed by this section must comply with 37-2-104 and with packaging and labeling guidelines developed by the board of pharmacy under Title 37, chapter 7.

(3) The prescribing and dispensing authority granted a physician assistant-certified may include the following:

(a) Prescribing, dispensing, and administration of Schedule III drugs listed in 50-32-226, Schedule IV drugs listed in 50-32-229, and Schedule V drugs listed in 50-32-232, is authorized.

(b) Prescribing, dispensing, and administration of Schedule II drugs listed in 50-32-224 may be authorized for limited periods not to exceed 48 hours.

(c) Records on the dispensing and administration of scheduled drugs must be kept.

(d) A physician assistant-certified shall maintain registration with the federal drug enforcement administration.

(e) Drugs dispensed by a physician assistant-certified must be prepackaged by a licensed pharmacist, except that samples provided by a pharmaceutical company representative may be dispensed.

(f) Prescriptions written by physician assistants-certified must comply with regulations relating to prescription requirements adopted by the board of pharmacy.

(g) The board shall adopt rules regarding the refilling of prescriptions written by physician assistants-certified.

History: **En. Sec. 4, Ch. 97, L. 1989.**

Compiler's Comments

Effective Date: Section 23, Ch. 97, L. 1989, provided in part: "[Sections 3, 4, 6, and 13 . . .] [codified as 37-20-403, 37-20-404, 37-20-406, and 37-20-202] are effective on passage and approval." Approved March 15, 1989.

37-20-405. Billing. A supervising physician or an institution where services were delivered may bill for physician assistant-certified services.

History: **En. Sec. 5, Ch. 97, L. 1989.**

37-20-406. Liaison to board. The Montana academy of physician assistants shall elect one person to serve as a nonvoting liaison to the board to represent the interests of physician assistants.

History: **En. Sec. 6, Ch. 97, L. 1989.**

Compiler's Comments

Effective Date: Section 23, Ch. 97, L. 1989, provided in part: "[Sections 3, 4, 6, and 13 . . .] [codified as 37-20-403, 37-20-404, 37-20-406, and 37-20-202] are effective on passage and approval." Approved March 15, 1989.

CHAPTER 21

DIETITIANS

Part 1 — General

37-21-101. Definitions.

Part 2 — Department of Health and Environmental Sciences

37-21-201. Rules.

Part 3 — Qualifications

37-21-301. Dietitian — qualifications.
37-21-302. Registered dietitian — qualifications.

Part 4 — Remedies—Penalty

37-21-401 through 37-21-404 reserved.
37-21-405. Remedies cumulative.
37-21-406. Violation — penalty.

Part 1

General

37-21-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Authorized agency" means a private agency or institution authorized by the department to establish academic, experience, and training qualifications for dietitians.

(2) "Department" means the department of health and environmental sciences as provided in 2-15-2101.

History: En. Sec. 1, Ch. 427, L. 1983.

Part 2

Department of Health and Environmental Sciences

37-21-201. Rules. The department may adopt rules in accordance with the Montana Administrative Procedure Act to implement this chapter. The rules may adopt standards, consistent with this chapter, promulgated by an authorized agency relating to academic, experience, and training requirements.

History: En. Sec. 4, Ch. 427, L. 1983.

Cross-References

Administrative Procedure Act, Title 2, ch. 4.

Part 3

Qualifications

37-21-301. Dietitian — qualifications. No person may use, in connection with his name or place of business, the term "dietitian" or represent in any way that he is a dietitian unless he:

(1) has been granted, prior to October 1, 1983, the right to use the term "dietitian" by an authorized agency; or

(2) (a) is 18 years of age or older;

(b) has satisfactorily completed appropriate academic requirements for the field of dietetics and related disciplines;

(c) has received a baccalaureate or higher degree in dietetics or a related field from a college or university accredited by the Northwestern association of schools and colleges; and

(d) has satisfactorily completed a program of supervised clinical experience of not less than 6 months in length that is designed to train entry-level dietitians through instruction and assignments in a clinical setting. The program must meet minimum requirements established by the department.

History: **En. Sec. 2, Ch. 427, L. 1983.**

Cross-References

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-21-302. Registered dietitian — qualifications. No person may use, in connection with his name or place of business, the term "registered dietitian" or represent in any way that he is a registered dietitian unless he:

(1) has been granted, prior to October 1, 1983, the right to use the term "registered dietitian" by an authorized agency; or

(2) (a) has fulfilled all the requirements set forth in 37-21-301(2);

(b) has satisfactorily completed an examination for registered dietitians administered by an authorized agency; and

(c) has satisfactorily completed, from time to time, such continuing education requirements as may be established by an authorized agency.

History: **En. Sec. 3, Ch. 427, L. 1983.**

Part 4

Remedies — Penalty

37-21-401 through 37-21-404 reserved.

37-21-405. Remedies cumulative. Remedies provided under this chapter are in addition to any other civil or criminal remedy provided by law.

History: **En. Sec. 6, Ch. 427, L. 1983.**

37-21-406. Violation — penalty. A person who violates this chapter or rules adopted under this chapter is guilty of a misdemeanor and is punishable by a fine not to exceed $500.

History: **En. Sec. 5, Ch. 427, L. 1983.**

CHAPTER 22

SOCIAL WORK

Part 1 — General

37-22-101. Purpose.
37-22-102. Definitions.

Part 2 — Board of Social Work Examiners and Professional Counselors

37-22-201. Duties of board.

Part 3 — Licensing

37-22-301. License requirements — exemptions.

37-22-302. Fees.
37-22-303. Issuance, effective date, and display of license.
37-22-304. Renewal of license.
37-22-305. Representation to public as licensed social worker — limitations on use of title.
37-22-306 through 37-22-310 reserved.
37-22-311. Grounds for revocation, suspension, or refusal to renew license.
37-22-312. Procedure for charging violation.

Part 4 — Regulation

37-22-401. Privileged communications — exceptions.
37-22-402 through 37-22-410 reserved.
37-22-411. Violations — penalties.

Chapter Cross-References

Disability insurance — freedom of choice of practitioners, 33-22-111.

Part 1

General

37-22-101. Purpose. The legislature finds and declares that because the profession of social work profoundly affects the lives of people of this state it is the purpose of this chapter to provide for the common good by insuring ethical, qualified, and professional practice of social work. This chapter and the rules promulgated under 37-22-201 set standards of qualification, education, training, and experience and will establish professional ethics for those who seek to engage in the practice of social work as licensed social workers.

History: En. Sec. 2, Ch. 544, L. 1983.

37-22-102. Definitions. As used in this chapter:

(1) "Board" means the board of social work examiners and professional counselors established under 2-15-1854.

(2) "Department" means the department of commerce.

(3) "Licensee" means a person licensed under this chapter.

(4) "Psychotherapy" means the use of psychosocial methods within a professional relationship to assist a person to achieve a better psychosocial adaptation and to modify internal and external conditions that affect individuals, groups, or families in respect to behavior, emotions, and thinking concerning their interpersonal processes.

(5) "Social work" means the professional practice directed toward helping people achieve more adequate, satisfying, and productive social adjustments. The practice of social work involves special knowledge of social resources, human capabilities, and the roles that individual motivation and social influences play in determining behavior and involves the application of social work techniques, including:

(a) counseling and using psychotherapy with individuals, families, or groups;

(b) providing information and referral services;

(c) providing, arranging, or supervising the provision of social services;

(d) explaining and interpreting the psychosocial aspects in the situations of individuals, families, or groups;

(e) helping communities to organize to provide or improve social and health services; and

(f) research or teaching related to social work.

History: **En. Sec. 3, Ch. 544, L. 1983; amd. Sec. 18, Ch. 572, L. 1985.**

Cross-References

Professional counseling, Title 37, ch. 23.

Part 2

Board of Social Work Examiners and Professional Counselors

37-22-201. Duties of board. The board shall:

(1) subject to 37-1-101, examine qualified applicants, issue licenses to qualified applicants that meet the requirements of this chapter, and renew licenses under the provisions of this chapter;

(2) recommend prosecutions for violations of 37-22-411 to the attorney general or the appropriate county attorney, or both;

(3) annually publish a list of the names and addresses of all persons who are licensed social workers;

(4) establish requirements for continuing education that are a condition of license renewal;

(5) meet at least once every 3 months to perform the duties described in this section. The board may, once a year by a consensus of its members, determine that there is no necessity for a board meeting.

(6) distribute a copy of the ethical standards to the certified masters of social work; and

(7) adopt rules that set professional, practice, and ethical standards for licensed masters of social work and such other rules as may be reasonably necessary for the administration of this chapter.

History: **En. Sec. 4, Ch. 544, L. 1983.**

Cross-References

Duties of boards, 37-1-131.

Disciplinary authority of boards — injunctions, 37-1-136.

Part 3

Licensing

37-22-301. License requirements — exemptions. (1) A license applicant shall satisfactorily complete an examination prepared and administered by the board, except that during the 365-day period following the effective date of this chapter a license must be granted without examination if the requirements of subsection (2) are met.

(2) Before an applicant may take the examination, he shall present three letters of reference from social workers, psychiatrists, psychologists, or psychiatric nurses who have knowledge of the applicant's professional performance and demonstrate to the board that he:

(a) has a doctorate or master's degree in social work from a program accredited by the council on social work education or approved by the board;

(b) has accumulated 3,000 hours of postdegree work experience in psychotherapy within the past 5 years; and

(c) abides by the social work ethical standards adopted under 37-22-201.

(3) An applicant who has failed the examination may reapply to take the examination.

(4) An applicant is exempt from the examination requirement if he satisfies the board that he is licensed, certified, or registered under the laws of a state or territory of the United States that imposes substantially the same requirements as this chapter and that he has passed an examination similar to that required by the board.

History: **En. Sec. 6, Ch. 544, L. 1983; amd. Sec. 1, Ch. 78, L. 1987.**

Cross-References

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-22-302. Fees. (1) Each applicant for a license shall, upon submitting his application to the board, pay an application fee set by the board equal to the cost of processing the application.

(2) Each applicant for a license required to take an examination shall, prior to commencement of the examination, pay an examination fee set by the board equal to the cost of administering the examination.

(3) Each applicant shall, prior to receipt of a license or license renewal, pay a fee set by the board equal to the cost of issuing a license.

(4) Subject to 37-1-101(6), money paid for application, examination, license, and license renewal fees must be deposited in the state special revenue fund for the use of the board.

History: **En. Sec. 7, Ch. 544, L. 1983; amd. Sec. 48, Ch. 281, L. 1983.**

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-22-303. Issuance, effective date, and display of license. (1) Upon successful completion of the examination required by 37-22-301 or upon demonstration by a person that he is exempt from examination and has otherwise fulfilled the requirements of 37-22-301, the applicant must be issued a license attesting to the date and fact of licensure. The license is effective on the date of issuance and expires December 31 of each year.

(2) The license must be displayed in the registrant's place of business or employment.

History: **En. Sec. 8, Ch. 544, L. 1983; amd. Sec. 2, Ch. 78, L. 1987.**

37-22-304. Renewal of license. (1) An application for renewal of an existing license made within 60 days after the expiration of the license is timely, and the rights and privileges of the applicant during that period remain in effect.

(2) Application for renewal must be made upon a form provided by the department. A renewal license must be issued upon payment of a renewal fee

set by the board and upon submitting proof of completion of continuing education requirements.

History: En. Sec. 9, Ch. 544, L. 1983.

37-22-305. Representation to public as licensed social worker — limitations on use of title. (1) No person may represent himself to be a licensed social worker by adding the letters "LSW" after his name or by any other means unless licensed under this chapter.

(2) Subsection (1) does not prohibit:

(a) qualified members of other professions such as physicians, psychologists, lawyers, pastoral counselors, educators, or the general public engaged in social work like activities from doing social work consistent with their training if they do not hold themselves out to the public by a title or description incorporating the words "licensed social work" or "licensed social worker";

(b) activities, services, and use of an official title by a person in the employ of a federal, state, county, or municipal agency or an educational, research, or charitable institution which are a part of the duties of the office or position;

(c) an employer from performing social work like activities performed solely for the benefit of his employees;

(d) activities and services of a student, intern, or resident in social work pursuing a course of study at an accredited university or college or working in a generally recognized training center if the activities and services constitute a part of the supervised course of study;

(e) activities and services of a person who is not a resident of this state, which services are rendered for a period that does not exceed, in the aggregate, 60 days during a calendar year if the person is authorized under the law of the state or country of residence to perform such activities and services. However, such persons shall report to the department the nature and extent of the activities and services if they exceed 10 days in a calendar year.

(f) pending disposition of the application for a license, activities and services by a person who has recently become a resident of this state, has applied for a license within 90 days of taking up residency in this state, and is licensed to perform such activities and services in the state of his former residence.

History: En. Sec. 5, Ch. 544, L. 1983.

37-22-306 through 37-22-310 reserved.

37-22-311. Grounds for revocation, suspension, or refusal to renew license. The board may reprimand a licensee or revoke, suspend, or refuse to renew the license of a licensee found to have committed:

(1) fraud or deceit in obtaining a license or license renewal;

(2) gross negligence, incompetency, or misconduct in the practice of social work as a licensed social worker;

(3) a felony;

(4) a violation of the rules for licensed social workers adopted by the board;

(5) a misdemeanor under 37-22-411; or

(6) any of the following unprofessional acts:

(a) misrepresentation of the type or status of his license;

(b) intentionally or recklessly causing physical or emotional harm to a client;

(c) misrepresentation of his professional qualifications, affiliations, or purposes;

(d) sexual relations with a client, solicitation of sexual relations with a client, sexual misconduct, or a sex offense if such act, offense, or solicitation is substantially related to the qualifications, functions, or duties of the licensee;

(e) performance of or representation of his ability to perform professional services beyond his field or fields of competence, as established by his education, training, and experience;

(f) failure to maintain the confidentiality, except as otherwise required or permitted by law, of all information received from a client during the course of treatment and all information about the client obtained from tests or other means;

(g) prior to the commencement of treatment, failure to disclose to a client or prospective client the fee to be charged for professional services or the basis upon which such fee will be computed; or

(h) advertising in a manner that is false or misleading.

History: **En. Sec. 10, Ch. 544, L. 1983.**

Cross-References

Reporting disciplinary actions against licensees, 37-1-105.

Duties of Director, 37-1-121.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-22-312. Procedure for charging violation. (1) Any member of the board or other person may charge a licensee with a violation of 37-22-311. The charge must be made by affidavit and subscribed and sworn to by the person making it and filed with the department. The charge must be investigated by the board and, unless the board dismisses the charge after investigation as unfounded or trivial, the board must act on the charge within 6 months after the date on which the charge was filed. The board is considered to have acted on a charge if it has given notice by mail to the licensee of its intent to reprimand him or revoke, suspend, or refuse to renew his license and the notice contains those matters required by 2-4-601.

(2) Any hearing on the charge must be held before all five members of the board and must be conducted in accordance with 37-1-121(1) and the Montana Administrative Procedure Act.

History: **En. Sec. 11, Ch. 544, L. 1983.**

Cross-References

Administrative Procedure Act, Title 2, ch. 4.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of director, 37-1-121.

Disciplinary authority of boards — injunctions, 37-1-136.

Part 4

Regulation

37-22-401. Privileged communications — exceptions. A licensee may not disclose any information he acquires from clients consulting him in his professional capacity except:

(1) with the written consent of the client or, in the case of the client's death or mental incapacity, with the written consent of the client's personal representative or guardian;

(2) that he need not treat as confidential a communication otherwise confidential that reveals the contemplation of a crime by the client or any other person or that in his professional opinion reveals a threat of imminent harm to the client or others;

(3) that if the client is a minor and information acquired by the licensee indicates that the client was the victim of a crime, the licensee may be required to testify fully in relation thereto in any investigation, trial, or other legal proceeding in which the commission of such crime is the subject of inquiry;

(4) that if the client or his personal representative or guardian brings an action against a licensee for a claim arising out of the social worker-client relationship, the client is considered to have waived any privilege;

(5) to the extent that the privilege is otherwise waived by the client; and

(6) as may otherwise be required by law.

History: **En. Sec. 12, Ch. 544, L. 1983.**

Cross-References

Privileges, Title 26, ch. 1, part 8.

Duties of witnesses, Title 26, ch. 2, part 3.

37-22-402 through 37-22-410 reserved.

37-22-411. Violations — penalties. (1) It is a misdemeanor for a person to:

(a) represent himself as a licensed social worker without being licensed under this chapter;

(b) obtain or attempt to obtain a license or license renewal by bribery or fraudulent representation; or

(c) knowingly make a false statement on any form used by the board to implement this chapter or the rules adopted under this chapter.

(2) A person convicted under this section shall be imprisoned in the county jail for a period not exceeding 6 months or fined not more than $500, or both. A person convicted of a second offense under this section shall be punished by both such fine and imprisonment.

History: **En. Sec. 13, Ch. 544, L. 1983.**

CHAPTER 23

PROFESSIONAL COUNSELING

Part 1 — General

37-23-101. Purpose.
37-23-102. Definitions.
37-23-103. Powers and duties of board.

Part 2 — Licensing

37-23-201. Representation as licensed professional counselor — license required.
37-23-202. Licensure requirements.
37-23-203. Issuance, effective date, and display of license.

37-23-204. Reciprocity.
37-23-205. Renewal of license.
37-23-206. Fees.
37-23-207 through 37-23-210 reserved.
37-23-211. Suspension or revocation of license.
37-23-212. Procedure for charging violation of professional or ethical standard.

Part 3 — Regulation—Penalties

37-23-301. Privileged communications — exceptions.
37-23-302 through 37-23-310 reserved.
37-23-311. Misdemeanor violations — penalties.

Chapter Cross-References
Disability insurance — freedom of choice in selection of practitioners, 33-22-111.

Part 1

General

37-23-101. Purpose. The legislature finds and declares that because the profession of professional counseling profoundly affects the lives of people of this state, it is the purpose of this chapter to provide for the common good by ensuring ethical, qualified, and professional practice of professional counseling. This chapter and the rules promulgated under 37-23-103 set standards of qualification, education, training, and experience and establish professional ethics for those who seek to engage in the practice of professional counseling as licensed professional counselors.

History: En. Sec. 1, Ch. 572, L. 1985.

37-23-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the board of social work examiners and professional counselors established under 2-15-1854.

(2) "Licensee" means a person licensed under this chapter.

(3) "Professional counseling" means engaging in methods and techniques that include:

(a) counseling, which means assisting an individual or a group, through the counseling relationship, to develop understanding of intrapersonal and interpersonal problems, to define goals, to make decisions, to plan a course of action reflecting his or their needs, interests, and abilities, and to use informational and community resources;

(b) appraisal, which means selecting, administering, scoring, and interpreting instruments designed to assess an individual's aptitudes, attitudes, abilities, achievement, interests, and personal characteristics and using nonstandardized methods and techniques for understanding human behavior in relation to coping with, adapting to, or changing life situations;

(c) technical assistance, which means applying scientific principles and procedures in counseling, guidance, and human development to provide assistance in understanding and solving a current or potential problem that an individual may have in relation to another individual, a group or organization, or other third party; and

(d) referral, which means evaluating information to identify needs or problems of an individual and to determine the advisability of referral to other specialists, informing the individual of such judgment, and communicating as requested or considered appropriate with such referral sources.

History: **En. Sec. 2, Ch. 572, L. 1985.**

Cross-References

Social work, Title 37, ch. 22.

37-23-103. Powers and duties of board. (1) The board shall:

(a) recommend amendments to this chapter to the governor or the legislature, or both;

(b) recommend prosecutions for violations of 37-23-311 to the attorney general or appropriate county attorneys, or both;

(c) annually publish a list of the names and addresses of all persons who are licensed professional counselors;

(d) establish requirements for continuing education that are conditions of license renewal;

(e) meet to perform the duties described in this section;

(f) adopt rules that set professional and ethical standards for licensed professional counselors which are based on national standards and such other rules as may be reasonably necessary for the administration of this chapter; and

(g) distribute a copy of the professional and ethical standards to each licensed professional counselor.

(2) The board may adopt rules governing the issuance of certificates of special competence in particular areas of practice as a licensed professional counselor. The board shall establish criteria for each particular area for which a certificate is issued.

History: **En. Sec. 3, Ch. 572, L. 1985.**

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Public records, Title 2, ch. 6.

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Preservation of records, Title 22, ch. 3, part 2.

Duty of Department to keep records, 37-1-101.

Duty of Department to provide facilities, 37-1-101.

Licensing investigation and review — records access, 37-1-135.

Disrupting meeting as disorderly conduct, 45-8-101.

Part 2

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-23-201. Representation as licensed professional counselor — license required. (1) No person may represent himself to be a licensed professional counselor by adding the letters "LPC" after his name or by any other means unless licensed under this chapter; and

(2) Subsection (1) does not prohibit:

(a) a qualified member of another profession, such as a physician, psychologist, lawyer, pastoral counselor, probation officer, court employee, nurse, social worker, school counselor, or educator, from professional counseling consistent with his training if he does not hold himself out to the public by a title or description incorporating the words "licensed professional counselor", "licensed counselor", or "professional counselor";

(b) an activity or service or use of an official title by a person employed by a federal, state, county, or municipal agency or an educational, research, or charitable institution that is a part of the duties of the office or position;

(c) an activity or service of an employee of a business establishment performed solely for the benefit of the establishment's employees;

(d) an activity or service of a student, intern, or resident in mental health counseling pursuing a course of study at an accredited university or college or working in a generally recognized training center if the activity or service constitutes a part of the supervised course of study;

(e) an activity or service of a person who is not a resident of this state, which activity or service is rendered for a period that does not exceed, in the aggregate, 60 days during a calendar year, if the person is authorized under the law of the state or country of residence to perform such activity or service. However, such person shall report to the department of commerce the nature and extent of the activity or service if it exceeds 10 days in a calendar year.

(f) pending disposition of the application for a license, the activity or service by a person who has recently become a resident of this state, has applied for a license within 90 days of taking up residency in this state, and is licensed to perform such activity or service in the state of his former residence.

History: En. Sec. 4, Ch. 572, L. 1985.

37-23-202. Licensure requirements. (1) To be licensed on or before December 31, 1987, as a professional counselor under this chapter, an applicant must have satisfactorily completed:

(a) a planned graduate program of study that was primarily counseling in nature which resulted in an advanced degree in a counseling field from an institution accredited to offer such a degree program;

(b) 2,000 hours or more of postdegree work experience as a counselor in a hospital, school, agency, or other supervised setting;

(c) and passed an examination prepared and administered by:

(i) the board, based on a national examination approved by the board;

(ii) the national board of certified counselors; or

(iii) the national academy of certified clinical mental health counselors; and

(d) an application form and process prescribed by the board that includes submission of three letters of nomination from counselors or related professionals, each of whom holds a master's degree or higher and who can attest to the quality of the applicant's work.

(2) To be licensed after December 31, 1987, an applicant must have satisfactorily completed:

(a) a planned graduate program of 90 quarter hours, primarily counseling in nature, nine quarter hours of which were earned in an advanced counseling practicum, which resulted in a graduate degree from an institution accredited to offer a graduate program in counseling;

(b) 2,000 hours of counseling practice supervised by a licensed professional counselor or licensed member of an allied mental health profession, at least half of which was postdegree. The applicant must have each supervisor endorse his application for licensure, attesting to the number of hours supervised.

(c) and passed an examination prepared and administered by:

(i) the board, based on a national examination approved by the board;

(ii) the national board of certified counselors; or

(iii) the national academy of certified clinical mental health counselors; and

(d) an application form and process prescribed by the board.

History: En. Sec. 5, Ch. 572, L. 1985; amd. Sec. 3, Ch. 78, L. 1987.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-23-203. Issuance, effective date, and display of license. (1) If an applicant meets the requirements contained in 37-23-202 and has paid the appropriate fees, the board shall issue a license to the applicant attesting to the date and fact of licensure. The license is effective on the date of issuance and must be renewed every year as provided in 37-23-205.

(2) The license must be displayed in the registrant's place of business or employment.

History: En. Sec. 7, Ch. 572, L. 1985.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-23-204. Reciprocity. Upon payment of the license fee provided for in 37-23-206, the board may issue a license to a person who, at the time of application, is licensed or certified as a professional counselor by an agency located in another state if the requirements of such licensure or certification are substantially similar to the requirements of this chapter.

History: En. Sec. 8, Ch. 572, L. 1985.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-23-205. Renewal of license. (1) A license may be issued for no longer than 1 year. The board may adopt rules to provide for annual renewal of an existing license.

(2) An application for renewal of an existing license made within 60 days after the expiration of the license is timely, and the rights and privileges of the applicant during that period remain in effect.

(3) Application for renewal must be made upon a form provided by the department. A renewal license must be issued upon payment of a renewal fee set by the board and upon submitting proof of completion of continuing education requirements established by the board.

History: **En. Sec. 9, Ch. 572, L. 1985.**

37-23-206. Fees. (1) Each applicant for a license shall, upon submitting his application to the board, pay an application fee set by the board commensurate with costs.

(2) Each applicant for a license required to take an examination shall, before commencement of the examination, pay an examination fee set by the board commensurate with costs.

(3) Each applicant shall, before receipt of a license or license renewal, pay a fee set by the board commensurate with costs.

(4) Subject to 37-1-101(6), money paid for application, examination, license, and license renewal fees must be deposited in the state special revenue fund for the use of the board.

History: **En. Sec. 6, Ch. 572, L. 1985.**

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-23-207 through 37-23-210 reserved.

37-23-211. Suspension or revocation of license. (1) The board may suspend or revoke the license of a person found according to the procedure contained in 37-23-212 to have violated a professional or ethical standard adopted by the board. A person may not practice counseling in this state as a licensed professional counselor during the period for which his license is suspended or revoked.

(2) The board may not suspend a license for more than 6 months. Upon termination of the suspension period, the person whose license has been suspended must undergo a board review before resuming practice as a licensed professional counselor.

(3) The board may not revoke a license for less than 3 years. Upon termination of the revocation period, the person whose license has been revoked may apply to the board for reinstatement.

History: **En. Sec. 10, Ch. 572, L. 1985.**

Cross-References

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of Director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-23-212. Procedure for charging violation of professional or ethical standard. (1) A member of the board or any other person may charge a licensee with violating a professional or ethical standard adopted by the board. The charge must be made by affidavit, subscribed and sworn to by the person making it, and filed with the department of commerce. The charge must be investigated by the board, and unless the board dismisses the charge after investigation as unfounded or trivial, the board must act on the charge within 6 months after the date on which the charge was filed. The board is considered to have acted on a charge if it has given notice by mail to the licensee of its intent to suspend or revoke his license and the notice contains those matters required by 2-4-601.

(2) A hearing on the charge must be conducted in accordance with 37-1-121(1) and the Montana Administrative Procedure Act.

History: **En. Sec. 11, Ch. 572, L. 1985.**

Cross-References

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of Director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Part 3

Regulation — Penalties

37-23-301. Privileged communications — exceptions. A licensee may not disclose any information he acquires from clients consulting him in his professional capacity except:

(1) with the written consent of the client or, in the case of the client's death or mental incapacity, with the written consent of the client's personal representative or guardian;

(2) that he need not treat as confidential a communication otherwise confidential that reveals the contemplation of a crime by the client or any other person or that in his professional opinion reveals a threat of imminent harm to the client or others;

(3) that if the client is a minor and information acquired by the licensee indicates that the client was the victim of a crime, the licensee may be required to testify fully in relation thereto in any investigation, trial, or other legal proceeding in which the commission of such crime is the subject of inquiry;

(4) that if the client or his personal representative or guardian brings an action against a licensee for a claim arising out of the counselor-client relationship, the client is considered to have waived any privilege;

(5) to the extent that the privilege is otherwise waived by the client; and

(6) as may otherwise be required by law.

History: **En. Sec. 12, Ch. 572, L. 1985.**

Cross-References

Privileges, Title 26, ch. 1, part 8.

Duties of witnesses, Title 26, ch. 2, part 3.

37-23-302 through 37-23-310 reserved.

37-23-311. Misdemeanor violations — penalties. (1) It is a misdemeanor for a person to knowingly:

(a) represent himself as a licensed professional counselor without being licensed under this chapter;

(b) obtain or attempt to obtain a license or license renewal by bribery or fraudulent representation; or

(c) make a false statement on any form used by the board to implement this chapter or the rules adopted under this chapter.

(2) A person convicted under this section shall be imprisoned in the county jail for a period not exceeding 6 months or fined not more than $500, or both. A person convicted of any subsequent offense under this section shall be punished by both such fine and imprisonment.

History: **En. Sec. 13, Ch. 572, L. 1985.**

CHAPTER 24

OCCUPATIONAL THERAPY

Part 1 — General Provisions

37-24-101. Short title.
37-24-102. Purpose.
37-24-103. Definitions.
37-24-104. Exemptions.

Part 2 — Board of Occupational Therapy Practice

37-24-201. Organization — general rulemaking power — quorum.
37-24-202. Powers and duties of board.
37-24-203. Compensation and expenses.

Part 3 — Licensing

37-24-301. License required.
37-24-302. Application.
37-24-303. Requirements for licensure.
37-24-304. Examination.
37-24-305. Waiver of requirements for licensure.
37-24-306. Issuance of license.
37-24-307. Limited permit.
37-24-308. Renewal of license — inactive status.
37-24-309. Denial, suspension, or revocation of license.
37-24-310. Fees.
37-24-311. Penalty.

Part 1

General Provisions

37-24-101. Short title. This chapter may be cited as the "Occupational Therapy Practice Act".

History: **En. Sec. 1, Ch. 629, L. 1985.**

37-24-102. Purpose. The legislature declares that it is the purpose of this chapter to provide for the regulation of persons offering occupational therapy services in order to:

(1) safeguard the public health, safety, and welfare;

(2) protect the public from incompetent, unscrupulous, and unauthorized persons;

(3) assure the highest degree of professional conduct on the part of occupational therapists and occupational therapy assistants; and

(4) assure the availability of occupational therapy services of high quality to persons in need of such services.

History: **En. Sec. 2, Ch. 629, L. 1985.**

37-24-103. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of occupational therapy practice established by 2-15-1859.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Occupational therapist" means a person licensed to practice occupational therapy under this chapter.

(4) "Occupational therapy" means the use of purposeful activity with an individual who is limited by physical injury or illness, psychosocial dysfunction, developmental or learning disability, or the aging process in order to maximize independence, prevent disability, and maintain health. The practice encompasses evaluation, treatment, and consultation. Occupational therapy services may be provided individually, in groups, or through social systems. Specific occupational therapy services include but are not limited to:

(a) teaching daily living skills;

(b) developing perceptual-motor skills and sensory integrative functioning;

(c) developing play skills and prevocational and leisure capacities;

(d) designing, fabricating, or applying splints or selective adaptive equipment and training in the use of upper extremity prosthetics or upper extremity orthotic devices;

(e) using specifically designed crafts and exercises to enhance functional performance;

(f) administering and interpreting tests such as manual muscle and range of motion; and

(g) adapting environments for the handicapped.

(5) "Occupational therapy aide" means a person who assists in the practice of occupational therapy under the direct supervision of an occupational therapist or occupational therapy assistant and whose activities require an understanding of occupational therapy but do not require professional or advanced training in the basic anatomical, biological, psychological, and social sciences involved in the practice of occupational therapy.

(6) "Occupational therapy assistant" means a person licensed to assist in the practice of occupational therapy under this chapter, who works under the general supervision of an occupational therapist in accordance with the provisions of the Essentials for an Approved Educational Program for the Occupational Therapy Assistant, published by the American occupational therapy association, as it read on October 1, 1985.

History: **En. Sec. 3, Ch. 629, L. 1985.**

37-24-104. Exemptions. Nothing in this chapter prevents or restricts the practice, services, or activities of:

(1) a person licensed in this state under any other law or certified or registered as a member of an occupational or professional group other than occupational therapy from engaging in the profession or occupation for which he is licensed, certified, or registered;

(2) a person who provides treatment, teaches living skills, designs orthotic or prosthetic devices, administers tests, or engages in other activities described in 37-24-103 but does not represent himself as an occupational therapist;

(3) a person employed as an occupational therapist or occupational therapy assistant by an institution or agency of the federal government;

(4) a person pursuing a supervised course of study leading to a degree or certificate in occupational therapy at an accredited institution or under an approved educational program if the person is designated by a title that clearly indicates his status as a student or trainee;

(5) a person fulfilling the supervised fieldwork experience requirements of 37-24-303 if the experience constitutes a part of the experience necessary to meet the requirements of that section;

(6) a person performing occupational therapy services in the state if these services are performed for no more than 10 days in a calendar year in association with an occupational therapist licensed under this chapter, provided that:

(a) the person is licensed under the law of another state that has licensure requirements at least as stringent as the requirements of this chapter; or

(b) the person meets the requirements for certification as an occupational therapist registered (OTR) or a certified occupational therapy assistant (COTA), established by the American occupational therapy certification board (AOTCB); or

(7) a person employed as an occupational therapy aide.

History: En. Sec. 4, Ch. 629, L. 1985; amd. Sec. 1, Ch. 325, L. 1989.

Compiler's Comments

1989 Amendment: At end of (6)(b) substituted "certification board (AOTCB)" for "association".

Part 2

Board of Occupational Therapy Practice

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Duties of Department, Director, and boards, Title 37, ch. 1, part 1.

37-24-201. Organization — general rulemaking power — quorum. (1) The board of occupational therapy practice shall meet annually and elect a chairman and a secretary from its members. The board shall hold other meetings when necessary to transact its business.

(2) The board may adopt rules for the conduct of its affairs and the administration of this chapter. Rules adopted by the board may include such rules as are reasonable or necessary for the proper performance of its duties and the regulation of proceedings before it.

(3) Three board members constitute a quorum for the transaction of business.

History: En. Sec. 6, Ch. 629, L. 1985.

Cross-References
Right to know, Art. II, sec. 9, Mont. Const.
Open meetings, Title 2, ch. 3, part 2.
Meeting defined, 2-3-202.
Adoption and publication of rules, Title 2, ch. 4, part 3.
Public records, Title 2, ch. 6.
Preservation of records, Title 22, ch. 3, part 2.
Duty of Department to keep records, 37-1-101.
Duty of Department to provide facilities, 37-1-101.
Licensing investigation and review — records access, 37-1-135.
Disrupting meeting as disorderly conduct, 45-8-101.

37-24-202. Powers and duties of board. (1) The board shall:

(a) administer, coordinate, and enforce the provisions of this chapter;

(b) evaluate the qualifications of applicants for licensure under this chapter and approve and supervise the examination of such applicants;

(c) investigate persons engaging in practices that allegedly violate the provisions of this chapter;

(d) adopt rules relating to professional licensure and the establishment of ethical standards of practice under this chapter;

(e) conduct hearings and keep records and minutes as the board considers necessary to carry out its functions; and

(f) adopt a seal by which the board shall authenticate its proceedings.

(2) A copy of the proceedings, records, or acts of the board, signed by the chairman or secretary of the board and stamped with the seal, is prima facie evidence of the validity of such document.

(3) The department may employ persons it considers necessary to carry out the provisions of this chapter.

History: En. Sec. 7, Ch. 629, L. 1985.

Cross-References
Oath defined, 1-1-201.
Seal defined, 1-4-201.
Manner of making seal, 1-4-202.
Oaths, Title 1, ch. 6.
Power of agencies to issue subpoenas, 2-4-104.
Power of hearing officer to issue subpoenas, 2-4-611.
Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.
Arrest of witness for disobedience of subpoena, 26-2-106, 26-2-107.

37-24-203. Compensation and expenses. Each board member is entitled to compensation and travel expenses as provided in 37-1-133.

History: En. Sec. 8, Ch. 629, L. 1985.

Part 3

Licensing

Part Cross-References
Licensing to follow contested case procedure, 2-4-631.
Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.
Licensure of criminal offenders, Title 37, ch. 1, part 2.
Nondiscrimination in licensing, 49-3-204.

37-24-301. License required. (1) (a) No person may hold himself out as an occupational therapist or as being able to practice occupational therapy or able to render occupational therapy services in this state unless he is licensed as an occupational therapist under the provisions of this chapter.

(b) No person may practice or hold himself out as an occupational therapy assistant in this state unless he is licensed as an occupational therapist or as an occupational therapy assistant.

(2) Only an individual may be licensed under this chapter.

History: **En. Sec. 9, Ch. 629, L. 1985.**

Compiler's Comments

Grandfather Provisions: Section 20, Ch. 629, L. 1985, provided: "The board shall grant a license to any person certified as an occupational therapist registered (OTR) or a certified occupational therapy assistant (COTA) by the American occupational therapy association (AOTA) prior to October 1, 1985."

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-24-302. Application. An applicant applying for licensure as an occupational therapist or as an occupational therapy assistant shall file a written application on forms prescribed by the board, showing that the applicant meets the requirements of 37-24-303(1)(a) through (1)(c).

History: **En. Sec. 10, Ch. 629, L. 1985; amd. Sec. 2, Ch. 325, L. 1989.**

Compiler's Comments

1989 Amendment: At end substituted "through (1)(c)" for "and (1)(b)".

37-24-303. Requirements for licensure. (1) To be eligible for licensure by the board as an occupational therapist or an occupational therapy assistant, the applicant shall:

(a) present evidence of having successfully completed the academic requirements of an educational program recognized by the board for the license sought;

(b) submit evidence of having successfully completed a period of supervised fieldwork experience arranged by the recognized educational institution where he completed the academic requirements or by a nationally recognized professional association;

(c) submit evidence of having been certified by the American occupational therapy certification board (AOTCB); and

(d) pass an examination as provided for in 37-24-304.

(2) The supervised fieldwork experience requirement for an occupational therapist is a minimum of 6 months. The supervised fieldwork experience requirement for an occupational therapy assistant is a minimum of 2 months.

History: **En. Sec. 11, Ch. 629, L. 1985; amd. Sec. 3, Ch. 325, L. 1989.**

Compiler's Comments

1989 Amendment: Inserted (1)(c) requiring applicant for licensure to submit evidence of Board certification.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-24-304. Examination. (1) A person who satisfies the educational and experience requirements of 37-24-303 may apply for examination in the manner prescribed by the board. The application must be accompanied by the nonrefundable fee prescribed by the board under 37-24-310. An unsuccessful examinee may apply for reexamination upon payment of the prescribed fee.

(2) The board shall adopt a written examination for occupational therapists and a written examination for occupational therapy assistants and establish standards for acceptable performance.

(3) Examinations shall be given at least twice each year at a time and place and under such supervision as the board may determine. The board shall give notice of the examinations in accordance with rules adopted by the board.

(4) Examinees may obtain their scores and review their examinations in accordance with rules established by the board.

History: En. Sec. 12, Ch. 629, L. 1985.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

37-24-305. Waiver of requirements for licensure. (1) The board may waive the examination, education, or experience requirements and grant a license to an applicant who presents proof of current licensure as an occupational therapist or occupational therapy assistant in another state, the District of Columbia, or a territory of the United States which requires standards for licensure that the board considers equivalent to the requirements for licensure under this chapter.

(2) The board may waive the examination, education, or experience requirements and grant a license to a person certified by the American occupational therapy certification board (AOTCB) as a certified occupational therapy assistant (COTA) or an occupational therapist registered (OTR) after October 1, 1985.

(3) Occupational therapists and occupational therapy assistants trained in a foreign country must satisfy the examination requirements of 37-24-304. The board shall require foreign-trained applicants, before examination, to furnish proof of educational and supervised fieldwork requirements substantially equal to those required by 37-24-303.

(4) The board may waive the educational requirements and license an applicant as an occupational therapist if the applicant has practiced as an occupational therapy assistant for 4 years, has completed the experience requirement before January 1, 1988, and has passed the examination for occupational therapists.

History: En. Sec. 13, Ch. 629, L. 1985; amd. Sec. 4, Ch. 325, L. 1989.

Compiler's Comments

1989 Amendment: In (2) substituted "certification board (AOTCB)" for "association (AOTA)" and after "1985" deleted clause concerning equivalent certification requirements.

37-24-306. Issuance of license. (1) The board shall issue a license to any person who meets the requirements of this chapter upon payment of the prescribed license fee.

(2) The license must include the dates of issuance and expiration.

History: En. Sec. 14, Ch. 629, L. 1985.

37-24-307. Limited permit. A limited permit may be granted to a person who has completed the education and experience requirements of this chapter. The permit allows the person to practice occupational therapy in association with a licensed occupational therapist. This permit is valid until the person is issued a license under 37-24-306 or until the results of the examination taken by the person are available to the board. This limited permit may be renewed only one time if the person has failed the examination.

History: **En. Sec. 15, Ch. 629, L. 1985.**

37-24-308. Renewal of license — inactive status. (1) Each license issued under this chapter is subject to annual renewal upon the payment of a renewal fee and expires unless renewed in the manner prescribed by the rules of the board. The board may provide for the late renewal of a license upon the payment of a late fee in accordance with its rules, but no late renewal of a license may be granted more than 5 years after its expiration.

(2) Upon request, the board may grant inactive status to a licensee who:

(a) does not practice as an occupational therapist or an occupational therapy assistant; and

(b) does not hold himself out as an occupational therapist or an occupational therapy assistant.

History: **En. Sec. 16, Ch. 629, L. 1985.**

37-24-309. Denial, suspension, or revocation of license. (1) The board may refuse to issue or renew a license or may revoke or suspend the license of any licensee or applicant if he has:

(a) obtained a license by means of fraud, misrepresentation, or concealment of material facts;

(b) been found guilty of unprofessional conduct as defined by rules adopted by the board;

(c) been convicted of a crime considered sufficient under 37-1-203 to warrant denial, revocation, or suspension of the license;

(d) violated any lawful order or rule of the board; or

(e) violated any provision of this chapter.

(2) Denial, suspension, or revocation of a license is permissible only after a hearing and procedures that comply with all applicable requirements of the Montana Administrative Procedure Act.

(3) One year after the denial, suspension, or revocation of a license, a person may apply for reinstatement and licensure. The board may in its discretion require an examination for reinstatement.

History: **En. Sec. 17, Ch. 629, L. 1985; amd. Sec. 5, Ch. 325, L. 1989.**

Compiler's Comments

1989 Amendment: In (1)(b) substituted "been found guilty of unprofessional conduct as defined by rules adopted by the board" for "violated ethical standards of practice established pursuant to this chapter".

Cross-References

Contested case procedure, Title 2, ch. 4, part 6.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of Director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-24-310. Fees. (1) The board may adopt fees in accordance with 37-1-134 for:

(a) applications for licensure;

(b) examination;

(c) initial license issuance;
(d) license renewal;
(e) late license renewal; and
(f) limited permit issuance.

(2) All fees collected by the board under this section must be deposited in the state special revenue fund for the use of the board in administering this act, subject to 37-1-101(6).

History: **En. Sec. 18, Ch. 629, L. 1985.**

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-24-311. Penalty. A person convicted of violating this chapter is guilty of a misdemeanor and shall be fined an amount not to exceed $500.

History: **En. Sec. 19, Ch. 629, L. 1985.**

CHAPTER 25

NUTRITIONISTS

Part 1 — General

37-25-101. Legislative finding and purpose.
37-25-102. Definitions.

Part 2 — Board of Medical Examiners

37-25-201. Powers and duties of the board.

Part 3 — Licensing

37-25-301. Scope of dietetic-nutrition practice.
37-25-302. Licensing requirements.
37-25-303. Issuance of license — effective date.
37-25-304. Exemptions from licensure requirements.
37-25-305. Representation to public as nutritionist — limitation on use of title.
37-25-306. Reciprocity.
37-25-307. Renewal of license — continuing education.
37-25-308. Grounds for revocation, suspension, or refusal to renew license.

Part 1

General

37-25-101. Legislative finding and purpose. The legislature finds and declares that the practice of nutrition assessment and counseling affects the public health, safety, and welfare. It is the purpose of this chapter to provide for the licensing and regulation of nutritionists in order to protect the public health, safety, and welfare, to ensure that nutritional services of high quality are available to the people of Montana, and to provide a means of identifying those qualified to practice nutrition.

History: **En. Sec. 1, Ch. 529, L. 1987.**

37-25-102. Definitions. In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Accredited" means accredited through the council on postsecondary accreditation and the U.S. department of education.

(2) "Board" means the board of medical examiners.

(3) "Commission" means the commission on dietetic registration, which is a member of the national commission for health certifying agencies.

(4) "Dietetic-nutrition practice" or "dietetics-nutrition" is the integration and application of principles derived from the sciences of nutrition, biochemistry, physiology, and food management and from the behavioral and social sciences to achieve and maintain health. The primary function of dietetic-nutrition practice is to provide nutrition assessment and nutrition counseling.

(5) "General nutritional information" means information on:

(a) principles of good nutrition;

(b) foods to be included in a daily diet;

(c) the essential nutrients needed by the body;

(d) recommended amounts of these nutrients;

(e) the action of these nutrients on the body;

(f) the effects of deficiencies in these nutrients; or

(g) foods and supplements that are good sources of essential nutrients.

(6) "Licensed nutritionist" means a nutritionist licensed under this chapter.

(7) "Nutrition assessment" means the evaluation of nutritional needs of individuals and groups based on appropriate biochemical, anthropometric, physical, and dietary data in order to determine nutrient needs and to recommend appropriate nutritional intake, including both enteral and parenteral nutrition.

(8) "Nutrition counseling" means providing assistance and advice to individuals or groups in the selection of food and other sources of nutrients to achieve appropriate nutritional intake, based on:

(a) the nutrition assessment;

(b) the composition of food and other sources of nutrients; and

(c) meal preparation consistent with cultural background and socioeconomic status.

(9) "Nutritionist" means:

(a) a person licensed under this chapter; or

(b) a person who has satisfactorily completed a baccalaureate and master's or a doctoral degree in the field of dietetics, food and nutrition, or public health nutrition conferred by an accredited college or university.

History: En. Sec. 2, Ch. 529, L. 1987; amd. Sec. 48, Ch. 83, L. 1989.

Compiler's Comments

1989 Amendment: Deleted former (4) that read: "(4) "Department" means the department of commerce"; and deleted (11) that read: "(11) "Registered dietitian" means a person who is registered by the commission."

Part 2

Board of Medical Examiners

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Duties of Department, Director, and boards, Title 37, ch. 1, part 1.

37-25-201. Powers and duties of the board. In addition to all other powers and duties conferred and imposed on the board by this chapter, the board shall:

(1) examine qualified applicants for a license to practice dietetics-nutrition, issue licenses to applicants who meet the requirements established by this chapter, and renew licenses as provided in 37-25-307; and

(2) adopt rules that set professional, practice, and ethical standards for licensed nutritionists and such other rules as may be necessary for the administration of this chapter.

History: En. Sec. 10, Ch. 529, L. 1987.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Oath defined, 1-1-201.

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

Oaths, Title 1, ch. 6.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Power of agencies to issue subpoenas, 2-4-104.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Power of hearing officer to issue subpoenas, 2-4-611.

Public records, Title 2, ch. 6.

Preservation of records, Title 22, ch. 3, part 2.

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.

Arrest of witness for disobedience of subpoena, 26-2-106, 26-2-107.

Duty of Department to keep records, 37-1-101.

Duty of Department to provide facilities, 37-1-101.

Licensing investigation and review — record access, 37-1-135.

Disrupting meeting as disorderly conduct, 45-8-101.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-25-301. Scope of dietetic-nutrition practice. Only a nutritionist can provide the following services:

(1) assessing the nutrition needs of individuals and groups and determining resources and constraints in the practice setting;

(2) establishing priorities and objectives that meet nutritive needs and are consistent with available resources and constraints;

(3) providing nutrition counseling for any individual;

(4) developing, implementing, and managing nutrition care systems; and

(5) evaluating, adjusting, and maintaining appropriate standards of quality in food and nutrition services.

History: En. Sec. 3, Ch. 529, L. 1987.

37-25-302. Licensing requirements. (1) An applicant for licensure as a licensed nutritionist shall file a written application with the board and demonstrate to the board that he is registered by the commission.

(2) An applicant shall pay an application fee, set by the board.

History: En. Sec. 4, Ch. 529, L. 1987.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-25-303. Issuance of license — effective date. (1) Upon successful completion of the requirements in 37-25-302, an applicant must be issued a license attesting to the date and fact of licensure.

(2) The license is effective on the date of issuance and expires 1 year after that date.

History: **En. Sec. 5, Ch. 529, L. 1987.**

37-25-304. Exemptions from licensure requirements. This chapter does not prevent:

(1) a student or intern in an approved academic program or a paraprofessional with approved dietetic-nutrition training from engaging in the practice of dietetics-nutrition if a licensed nutritionist is available for direct supervision and if the student, intern, or paraprofessional does not represent himself to the public as a nutritionist;

(2) a licensed physician or nurse from engaging in the practice of dietetics-nutrition when it is incidental to the practice of his profession;

(3) a person licensed under any other law from engaging in the profession or business for which he is licensed if he does not represent himself to the public as a nutritionist;

(4) an educator or advisor employed by a nonprofit agency acceptable to the board or by an accredited degree-granting institution or an accredited elementary or secondary school from engaging in an activity within the scope of his salaried position;

(5) a person employed by or under contract with an agency of the state or federal government from discharging his official duty if he does not represent himself to the public as a nutritionist;

(6) a person from furnishing general nutritional information, including dissemination of literature, as to the use of food, food materials, or dietary supplements or from engaging in the explanation as to the use of foods or food products, including dietary supplements, in connection with the marketing and distribution of those products if he does not represent himself to the public as a nutritionist;

(7) a person from furnishing general nutrition information or disseminating literature if he does not represent himself to the public as a dietitian or a nutritionist; or

(8) a person from fulfilling state or federal regulations governing the delivery or provision of nutritional health services to hospitals or long-term care facilities if he does not represent himself to the public as a nutritionist.

History: **En. Sec. 6, Ch. 529, L. 1987.**

37-25-305. Representation to public as nutritionist — limitation on use of title. No person may represent himself to the public by any title, sign, or advertisement or description of services as a nutritionist or a licensed nutritionist unless he has been licensed under this chapter or has met the requirements of 37-25-102(10)(b).

History: **En. Sec. 7, Ch. 529, L. 1987.**

37-25-306. Reciprocity. A person licensed to practice dietetics-nutrition in another state with licensing requirements equivalent to or more stringent than those in 37-25-302 is entitled to a license to practice dietetics-nutrition in Montana.

History: **En. Sec. 8, Ch. 529, L. 1987.**

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-25-307. Renewal of license — continuing education. (1) An application for renewal of license must be made annually within 30 days after the expiration of the existing license.

(2) A renewal license must be issued when the applicant submits proof that requirements for continuing education have been met and pays a renewal fee set by the board commensurate with costs.

(3) An additional fee may be imposed on applications for renewal received by the board more than 30 days after the expiration of the existing license.

History: **En. Sec. 9, Ch. 529, L. 1987.**

37-25-308. Grounds for revocation, suspension, or refusal to renew license. The board may impose a fine or probationary conditions, suspend or revoke a license, or deny or refuse to renew a license if the licensee or applicant has:

(1) obtained a license by means of fraud, misrepresentation, or concealment of material facts;

(2) engaged in unprofessional conduct or gross incompetence as defined by rule of the board;

(3) been convicted of a crime of moral turpitude or a felony related to the practice of dietetics-nutrition; or

(4) violated an order or rule of the board.

History: **En. Sec. 11, Ch. 529, L. 1987.**

Cross-References

Contested case procedure, Title 2, ch. 4, part 6.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of Director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

CHAPTERS 26 THROUGH 28

RESERVED

CHAPTER 29

DENTURITRY

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37-29-102. Definitions.
37-29-103. Association with dentists permitted.

37-29-104. Health insurance policies to include denturist services.
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37-29-201. Board powers and duties.
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37-29-401. Standards of conduct and practice.
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37-29-412. Violation and penalty.

Chapter Cross-References

Dentistry and dental hygiene, Title 37, ch. 4.

Part 1

General

37-29-101. Short title. This chapter may be cited as the "Freedom of Choice in Denture Services Act of 1984".

History: En. Sec. 1, I.M. No. 97, approved Nov. 6, 1984.

37-29-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the state board of dentistry provided for in 2-15-1842.

(2) "Denture" means any removable full or partial upper or lower prosthetic dental appliance to be worn in the mouth.

(3) "Denturist" means a person licensed under this chapter to engage in the practice of denturitry.

(4) "Department" means department of commerce provided for in Title 2, chapter 15, part 18.

(5) "Immediate denture" means a denture constructed prior to and inserted immediately after extraction of teeth.

(6) "Practice of denturitry" means:

(a) the making, fitting, constructing, altering, reproducing, or repairing of a denture and furnishing or supplying of a denture directly to a person or advising the use of a denture; or

(b) the taking or making or the giving of advice, assistance, or facilities respecting the taking or making of any impression, bite, cast, or design preparatory to or for the purpose of making, constructing, fitting, furnishing, supplying, altering, repairing, or reproducing a denture.

History: En. Sec. 2, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 3, Ch. 524, L. 1987.

37-29-103. Association with dentists permitted. A licensed denturist may enter into any lawful agreement with a dentist regarding fees, compensation, and business association.

History: En. Sec. 19, I.M. No. 97, approved Nov. 6, 1984.

37-29-104. Health insurance policies to include denturist services. Notwithstanding any provision of any policy of insurance covering health, whenever such policy provides for reimbursement for any service that is within the lawful scope of practice of a denturist, the insured under such policy is entitled to reimbursement for such service, whether the service is performed by a licensed dentist or a licensed denturist.

History: En. Sec. 18, I.M. No. 97, approved Nov. 6, 1984.

Cross-References

Insurance contract — policy provisions, Title 33, ch. 15, part 3.

Dentists performing services common to medicine and dentistry, 33-30-1011.

37-29-105. Applicability of other law. To the extent that they do not conflict with the provisions of this chapter, the provisions of chapter 1 of this title and Title 2, chapters 4 and 15, apply to the powers and duties of the department and the board.

History: En. Sec. 12, Ch. 548, L. 1985.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Allocation of boards for administrative purposes, 2-15-121.

Part 2

Board of Dentistry

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Duties of Department, Director, and boards, Title 37, ch. 1, part 1.

37-29-201. Board powers and duties. The board has the following powers and duties:

(1) determination of the qualifications of applicants for licensure under this chapter;

(2) administration of examinations for licensure under this chapter;

(3) collection of fees and charges prescribed in this chapter;

(4) issuance, suspension, and revocation of licenses for the practice of denturitry under the conditions prescribed in this chapter; and

(5) to adopt, amend, and repeal rules necessary for the implementation, continuation, and enforcement of this chapter, including but not limited to license applications, form and display of licenses, license examination format, criteria and grading of examinations, disciplinary standards for licensees, inspection of denturitry premises and facilities, and investigation of complaints.

History: **En. Sec. 10, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 4, Ch. 548, L. 1985.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-29-202. Repealed. Sec. 5, Ch. 524, L. 1987.

History: **En. Sec. 8, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 2, Ch. 548, L. 1985.**

37-29-203. Repealed. Sec. 5, Ch. 524, L. 1987.

History: **En. Sec. 9, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 3, Ch. 548, L. 1985.**

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-29-301. License to practice required. (1) After April 1, 1985, a person must hold a license for the practice of denturitry in order to perform the following acts:

(a) engaging or offering to engage in the practice of denturitry; or

(b) use in connection with his name the word or letters "denturist", "L.D.", or any other words, letters, abbreviations, or insignia implying that such person is engaged in the practice of denturitry.

(2) The practice of denturitry within the context of this chapter requires that all work except cast frame work be performed at the address shown on the denturist's license.

History: **En. Sec. 3, I.M. No. 97, approved Nov. 6, 1984.**

37-29-302. Exceptions. The provisions of this chapter do not apply to:

(1) a person interning under the direct supervision of a licensed denturist as required by 37-29-303(2), provided that no denturist may supervise more than one such person at any one time;

(2) the practice of dentistry or medicine by persons authorized to do so by the state of Montana; or

(3) a student of denturitry in pursuit of clinical studies under a school program or internship as required by 37-29-303(2).

History: **En. Sec. 4, I.M. No. 97, approved Nov. 6, 1984.**

37-29-303. Application for license. Upon application and payment of the appropriate fee, the board shall issue a license to practice denturitry to any applicant who meets one of the following criteria and scores a passing grade on the examination for licensure:

(1) (a) Applications for persons engaged in the practice of denturitry on December 1, 1984, must be filed prior to April 1, 1985, and must include the following:

(i) three signed affidavits by persons other than family members that the applicant has been employed in denture technology for at least 5 years prior to application, is able to demonstrate competency in intraoral procedures, and has been a resident of the state of Montana for at least 6 months prior to April 1, 1985; and

(ii) documentation that the applicant has successfully completed courses approved by the board in head and oral anatomy and physiology, oral pathology, partial denture construction and design, clinical dental technology, radiology, dental laboratory technology, asepsis, clinical jurisprudence, medical emergencies, and cardiopulmonary resuscitation.

(b) Subsection (1)(a) must be applied retroactively to permit qualification of license applicants initially qualified and applying prior to the appointment and qualification of the original board under this chapter and section 27 of I.M. No. 97.

(2) Applications filed on or after April 1, 1985, must include:

(a) documentation that the applicant has completed formal training of not less than 2 years at an educational institution accredited by a national or regional accrediting agency recognized by the Montana state board of regents, the curriculum of which includes courses in head and oral anatomy and physiology, oral pathology, microbiology, partial denture construction and design, clinical dental technology, radiology, dental laboratory technology, asepsis, clinical jurisprudence, and medical emergencies, including cardiopulmonary resuscitation; and

(b) documentation that the applicant:

(i) has completed 2 years of internship under the direct supervision of a licensed denturist; or

(ii) has 3 years of experience as a denturist under licensure in another state or Canada.

(3) A denturist who has been lawfully licensed or certified by initial licensing provisions in any state or territory that maintains a standard of denturitry which is equal to that of Montana must submit a certificate from the examining body of the state or territory in which he is certified or licensed, attesting to 5 years' practice under the certificate of license. However, no applicant may be licensed under the provisions of this subsection unless the state or territory in which he is licensed or certified extends a like privilege to denturists licensed by the state of Montana to practice denturitry. The board may enter into reciprocal relations with those states or territories whose laws are compatible with this chapter.

History: En. Sec. 11, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 5, Ch. 548, L. 1985.

Cross-References

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-29-304. Applications and fees. (1) The board is initially entitled to charge and collect the following fees:

(a) $200 application for licensing;

(b) $200 for original license;

(c) $200 annual license renewal fee;

(d) $200 for examination or reexamination, provided that if on reexamination only the written examination is required, the fee is $100; and

(e) $50 for a duplicate or replacement license or a license for a second address, provided that no denturist may hold licenses bearing more than two different addresses.

(2) The board may set other fees and modify the initial fees in accordance with the provisions of 37-1-134.

History: En. Sec. 13, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 6, Ch. 548, L. 1985.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

37-29-305. Examinations. The board shall administer the examinations for licensure, subject to the following requirements:

(1) Examinations must be of such character as to determine the qualifications, fitness, and ability of the applicant to practice denturitry. The form of the test must include written and oral examinations and a practical demonstration of skills.

(2) Examinations must be held at least annually on the second Monday in July. An applicant must obtain an average percentage score of 75% or better to qualify for licensure. The written and practical examinations shall carry equal weight. The oral examination results may adjust an average score only two percentage points.

(3) The written examination must include coverage of the following subjects:

(a) head and oral anatomy and physiology;

(b) oral pathology;

(c) partial denture construction and design;

(d) microbiology;

(e) radiology;

(f) clinical dental technology;

(g) dental laboratory technology;

(h) asepsis;

(i) clinical jurisprudence;

(j) medical emergencies.

(4) Applicants who fail to score a 75% average on the written and practical examinations may, upon payment of the appropriate fee, have a second opportunity to take the written or practical examinations, or both, provided that all applicants under 37-29-303(1) are examined on or before April 1, 1985.

History: En. Sec. 12, I.M. No. 97, approved Nov. 6, 1984.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

37-29-306. Licensing. (1) After March 1, 1985, a denturist license is valid for a period of 1 year. A renewal license must be issued upon payment of the renewal fee and the submission of proof of the completion of not less than 12 hours of continuing education, which may include programs sponsored by an educational institution, state denturist licensing board, or a recognized denturist organization. Subject matter must be pertinent to denturitry as enumerated in 37-29-305(3). Requests for approval of continuing education programs must be made to the board, providing sufficient outline of the program on which the board may base its determination. Hours pertain to clock hours actually attended by the licensee. In addition, the denturist shall submit proof that he holds a current cardiopulmonary resuscitation card. A license issued effective as of a date other than March 1 will be valid until midnight February 28 next following the date it was issued. The license shall bear on its face the address where the licensee's denturist services will be performed.

(2) Applications must be submitted on forms approved by the board and furnished by the department. Each application must include all other documentations necessary to establish that the applicant meets the requirements for licensure and is eligible to take the licensure examination. Applications must be accompanied by the appropriate fees.

(3) After April 1, 1985, the board may by rule alter future renewal dates for licenses under this chapter.

History: En. Sec. 14, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 7, Ch. 548, L. 1985; amd. Sec. 49, Ch. 83, L. 1989.

Compiler's Comments

1989 Amendment: In (1) substituted "state denturist licensing board" for "state denturist board".

37-29-307 through 37-29-310 reserved.

37-29-311. Suspension or revocation of license. (1) The board has the power to refuse to issue a license, to suspend or revoke a license or to place a licensed person on probation for a period specified by the board, or to reprimand or censure a licensee for any of the following causes:

(a) conviction of a crime if that crime bears a demonstrable relationship to the practice of denturitry;

(b) incompetence or gross negligence in the practice of denturitry;

(c) fraud or misrepresentation in the practice of denturitry;

(d) the use of any narcotic or dangerous drug or intoxicating liquor to an extent that such use impairs the ability to conduct safely the practice of denturitry;

(e) the willful violation of any provision of this chapter; or

(f) unprofessional conduct as defined by rule of the board.

(2) The board or its agents may examine and inspect the place of business of any denturist at any time during business hours or upon at least 72 hours' notice made by U.S. mail to the address of record of the denturist if the board or its agents are unable to establish the regular business hours. Inspections must be made to insure compliance with the standards of conduct and practice set forth in 37-29-401.

(3) Conditions considered by investigators to be a menace to the public health must be brought to the attention of the board for consideration and immediate action.

History: En. Sec. 15, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 8, Ch. 548, L. 1985.

Cross-References

Power of agencies to issue subpoenas, 2-4-104.

Contested case procedure, Title 2, ch. 4, part 6.

Power of hearing officer to issue subpoenas, 2-4-611.

Contempts, Title 3, ch. 1, part 5.

Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.

Arrest of witness for disobedience of subpoena, 26-2-106, 26-2-107.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of Director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-29-312. Revocation of license stays eligibility. A denturist whose license has been revoked either by the Montana board of denturitry or the similar body of another state is not eligible to apply for a license until 1 year after the date of revocation.

History: **En. Sec. 16, I.M. No. 97, approved Nov. 6, 1984.**

37-29-313. Renewal or reinstatement of license. One year after revocation of a license, the board at its discretion may grant a temporary license under a 1-year probationary period. At the end of the probationary period, the licensee must appear before the board and upon approval by the board and payment of appropriate fee must be fully reinstated. The board shall grant such approval upon being satisfied that the licensee has complied with this chapter during the probationary period and will comply in the future.

History: **En. Sec. 17, I.M. No. 97, approved Nov. 6, 1984.**

37-29-314 through 37-29-320 reserved.

37-29-321. Judicial review of board action. A person who is aggrieved by an action of the board in denying, refusing to renew, suspending, or revoking a denturist license may petition for judicial review as provided in Title 2, chapter 4, part 7.

History: **En. Sec. 22, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 9, Ch. 548, L. 1985.**

Part 4

Regulation

37-29-401. Standards of conduct and practice. Each denturist must comply with the following standards in his practice:

(1) There shall be at least three separate rooms:

(a) a reception room;

(b) an operatory room; and

(c) a laboratory.

(2) The operatory room must have a sink and cuspidor with running water and a disposal system.

(3) There must be a sterilization unit and cold disinfectant in every office to insure the protection of the public. Each denturist shall take care to use proper sterilization and sanitation techniques in all phases of his work.

(4) Floors, walls, ceilings, and benches must be kept in a sanitary condition.

(5) Every patient must have a separate and clean bib and a disposable cup.

(6) Every denturist shall wear a clean and professional garment.

(7) Every denturist shall wash his hands with germicidal or antiseptic soap and water in the presence of each patient.

(8) Every licensed denturist must carry a current cardiopulmonary resuscitation card.

(9) Adequate and conveniently located toilet facilities must be provided within the building.

(10) A complete record of each patient must be kept.

(11) All teeth and materials used shall meet American dental association standards.

(12) All nonmetal full dentures shall be permanently identified with the first and last name of the owner at the time of processing the dentures.

History: En. Sec. 6, I.M. No. 97, approved Nov. 6, 1984.

37-29-402. Prohibitions. No licensed denturist may:

(1) extract or attempt to extract teeth;

(2) initially insert immediate dentures in the mouth of the intended wearer;

(3) diagnose or treat any abnormalities;

(4) recommend any prescription drug for any oral or medical disease; or

(5) construct or fit orthodontic appliances.

History: En. Sec. 5, I.M. No. 97, approved Nov. 6, 1984.

37-29-403. Procedure for making and fitting partial denture. (1) Prior to making and fitting a partial denture, a denturist shall:

(a) formulate a study model of the intended denture;

(b) refer the patient to a dentist, together with the model for tooth cleaning, mouth preparation, and x-rays, as needed; and

(c) make the partial denture and fit it to the existing teeth after the dentist has completed the procedures listed in subsection (1)(b) and in accordance with the dentist's recommendations.

(2) A denturist may not cut, surgically remove, or surgically reduce any tissue or teeth in the process of fitting a partial denture.

(3) A denturist who makes or fits a partial denture in a manner not consistent with this section is subject to the sanctions provided in 37-29-311.

History: En. Sec. 15, Ch. 548, L. 1985.

37-29-404. Notice of board address — guarantee. (1) A notice must be posted in a conspicuous area on any premises where the practice of denturitry is conducted, with lettering of a size easily read by the average person and in substantially the following form:

> ANY CONSUMER WHO HAS A COMPLAINT RELATING TO PRACTICES OF THIS ESTABLISHMENT MAY CONTACT THE MONTANA BOARD OF DENTISTRY, DEPARTMENT OF COMMERCE, 1424 NINTH AVENUE, HELENA, MONTANA 59620.

(2) All denturist services must be unconditionally guaranteed for a period of not less than 90 days.

History: En. Sec. 20, I.M. No. 97, approved Nov. 6, 1984; amd. Sec. 4, Ch. 524, L. 1987.

37-29-405. Advertising restrictions. No person may represent or hold himself out to the public as a denturist or as practicing denturitry unless licensed under this chapter.

History: En. Sec. 14, Ch. 548, L. 1985.

37-29-406 through 37-29-410 reserved.

37-29-411. Injunction. When it appears to the board that any person, firm, or corporation is violating any of the provisions of this chapter, the board may in its own name bring an action in a court of competent jurisdiction for an injunction against such violation, and the court may enjoin the person, firm, or corporation from violation of this chapter without regard to whether proceedings have been or may be instituted before the board or whether criminal proceedings have been or may be instituted.

History: En. Sec. 11, Ch. 548, L. 1985.

37-29-412. Violation and penalty. Violation of any provision of this chapter constitutes a misdemeanor and upon conviction is punishable by a fine of not less than $100 or more than $1,000 or by imprisonment for not more than 6 months in the county jail, or by both such fine and imprisonment.

History: En. Sec. 21, I.M. No. 97, approved Nov. 6, 1984.

CHAPTER 30

BARBERS

Part 1 — General

37-30-101. Definitions — practice of barbering.

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37-30-201. Organization — seal — records — deposit of money.
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37-30-203. Powers and duties of board and department — conducting examinations — rulemaking — hiring of inspectors.

Part 3 — Licensing of Barbers

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Part 4 — Licensing and Regulation of Barbershops and Schools

37-30-401. License required.
37-30-402. Application procedure for barbershops — investigation and inspection — hearing — grant or refusal of license.
37-30-403. Facilities required for licensure — inspection.
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37-30-408 through 37-30-410 reserved.
37-30-411. Only licensed barber eligible for barbershop license.
37-30-412. Barbershop owner's duty to monitor employees.
37-30-413. Display of price schedule.
37-30-414 through 37-30-420 reserved.
37-30-421. Display of license.
37-30-422. Maintenance of sanitary conditions.
37-30-423. Initial inspection fee — renewal.
37-30-424. Fee for advanced barber training program, clinic, or seminar.
37-30-425. Renumbered 37-30-502.

Part 5 — Remedies for Violation

37-30-501. Penalty.
37-30-502. Refusal, suspension, or revocation of license.

Part 1
General

37-30-101. Definitions — practice of barbering. (1) Unless the context requires otherwise, as used in this chapter the following definitions apply:

(a) "Barbershop" means a place where a person carries on, engages in, practices, or causes to be carried on, engaged in, or practiced the business of barbering.

(b) "Board" means the board of barbers provided for in 2-15-1856.

(c) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(2) Any one or any combination of the following practices, when done upon the human body for tonsorial purposes and not for the treatment of disease or physical or mental ailments and when done for payment, either directly or indirectly, constitutes the practice of barbering:

(a) shaving or trimming the beard;

(b) cutting, styling, coloring, or waving the hair;

(c) straightening of the hair by using chemicals;

(d) giving facial or scalp massage or treatment with oils, creams, lotions, or other preparations, either by hand or mechanical appliances;

(e) singeing or shampooing the hair or applying hair tonic or bleaching or highlighting the hair of male persons;

(f) applying cosmetic preparations, antiseptics, powders, oils, lotions, or gels to scalp, face, hands, or neck.

(3) The practice of cosmetology by a licensed cosmetologist, including cutting the hair of any person, does not constitute the practice of barbering.

History: (1)En. 66-401.1 by Sec. 34, Ch. 350, L. 1974; Sec. 66-401.1, R.C.M. 1947; (2)En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec.

3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; Sec. 66-403, R.C.M. 1947; (3)En. Sec. 2, Ch. 127, L. 1929; re-en. Sec. 3228.20, R.C.M. 1935; amd. Sec. 2, Ch. 183, L. 1937; Sec. 66-402, R.C.M. 1947; R.C.M. 1947, 66-401.1, 66-402, 66-403(2); amd. Sec. 3, Ch. 274, L. 1981; (4)En. Sec. 4, Ch. 544, L. 1981; amd. Sec. 1, Ch. 565, L. 1983; amd. Sec. 1, Ch. 274, L. 1985.

Cross-References

Cosmetology not practice of barbering, 37-31-102.

Part 2

Board of Barbers

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1856.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-30-201. Organization — seal — records — deposit of money. (1) The board shall elect a president, secretary, and treasurer. It shall adopt a seal for the authentication of its orders and records.

(2) The department shall keep a record of proceedings of the board. Money collected by the department shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 7, Ch. 127, L. 1929; re-en. Sec. 3228.25, R.C.M. 1935; amd. Sec. 138, Ch. 147, L. 1963; amd. Sec. 23, Ch. 177, L. 1965; amd. Sec. 39, Ch. 350, L. 1974; R.C.M. 1947, 66-407; amd. Sec. 1, Ch. 277, L. 1983.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

Public records, Title 2, ch. 6.

Duties of Department, 37-1-101.

37-30-202. Compensation of members — expenses. Each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 8, Ch. 127, L. 1929; re-en. Sec. 3228.26, R.C.M. 1935; amd. Sec. 2, Ch. 237, L. 1957; amd. Sec. 139, Ch. 147, L. 1963; amd. Sec. 2, Ch. 48, L. 1969; amd. Sec. 19, Ch. 93, L. 1969; amd. Sec. 1, Ch. 302, L. 1973; amd. Sec. 40, Ch. 350, L. 1974; amd. Sec. 25, Ch. 439, L. 1975; R.C.M. 1947, 66-408; amd. Sec. 24, Ch. 474, L. 1981.

37-30-203. Powers and duties of board and department — conducting examinations — rulemaking — hiring of inspectors. (1) The department shall, subject to 37-1-101, conduct practical examinations of applicants for certificates of registration to practice as registered barbers or barber instructors not less than four times a year at times and places the board determines. The examinations shall cover the fundamentals of barbering, dermatology, and sanitation. The department shall issue certificates of registration.

(2) The board may adopt rules for the administration of this chapter.

(3) A person hired by the department to make an inspection of a barbershop, school, or college shall receive a salary plus travel expenses as provided for in 2-18-501 through 2-18-503, as amended.

History: En. Sec. 9, Ch. 127, L. 1929; amd. Sec. 2, Ch. 18, L. 1931; re-en. Sec. 3228.27, R.C.M. 1935; amd. Sec. 4, Ch. 150, L. 1939; amd. Sec. 3, Ch. 48, L. 1969; amd. Sec. 41, Ch. 350, L. 1974; amd. Sec. 10, Ch. 453, L. 1977; R.C.M. 1947, 66-409; amd. Sec. 3, Ch. 83, L. 1981; amd. Sec. 5, Ch. 544, L. 1981; amd. Sec. 2, Ch. 565, L. 1983; amd. Sec. 2, Ch. 274, L. 1985.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Allocation for administrative purposes only, 2-15-121.

Quasi-judicial boards, 2-15-124.

Duties of boards, 37-1-131.

Part 3

Licensing of Barbers

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-30-301. Certificate required. (1) Except as provided in subsection (2), a person may not practice or attempt to practice barbering unless he first receives from the department a certificate of registration.

(2) The board may authorize the department to grant a temporary certificate to any person qualified to take the examination required by 37-30-305 who pays a temporary certification fee prescribed by the board. A person holding a temporary certificate may engage in the practice of barbering under the supervision of a certified barber for a period of 90 days or until the next examination scheduled by the board, whichever is longer.

History: En. Sec. 12, Ch. 127, L. 1929; re-en. Sec. 3228.30, R.C.M 1935; amd. Sec. 7, Ch. 150, L. 1939; amd. Sec. 44, Ch. 350, L. 1974; R.C.M. 1947, 66-412(1); amd. Sec. 3, Ch. 565, L. 1983; amd. Sec. 3, Ch. 274, L. 1985.

37-30-302. Repealed. Sec. 18, Ch. 565, L. 1983.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(6).

37-30-303. Qualifications — application. (1) A person is qualified to receive a certificate of registration to practice barbering only if he:

(a) has completed 2,000 hours of instruction at a licensed barber school or college or other school recognized by the board and graduated from a licensed barber school or college or other school recognized by the board;

(b) has successfully passed the examination conducted by the department under 37-30-305, subject to 37-1-101, to determine his fitness to practice barbering;

(c) is at least 18 years old;

(d) is a graduate of the 8th grade; and

(e) is of good moral character.

(2) An applicant must file with the department an application setting forth the following information:

(a) full name and age of the applicant;

(b) name and place of the licensed barber school or college or other school which he attended;

(c) dates of attendance at the licensed barber school or college or other school;

(d) whether the applicant received a certificate of graduation from a licensed barber school or college or other school; and

(e) other information the board considers necessary.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(1), (3), (4); amd. Sec. 4, Ch. 565, L. 1983; amd. Sec. 4, Ch. 274, L. 1985.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Apprenticeship, Title 39, ch. 6, part 1.

37-30-304. Repealed. Sec. 8, Ch. 274, L. 1985.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(5).

37-30-305. Examination. Except as provided in 37-30-309, an applicant for a barber's certificate of registration must apply to the department to take the examination for a barber's certificate of registration.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(7); amd. Sec. 6, Ch. 544, L. 1981; amd. Sec. 5, Ch. 274, L. 1985.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

37-30-306. Communicable disease — physician's certificate required. (1) A barber or barber instructor may not receive a certificate of registration or renewal until he has presented to the board of barbers a physician's certificate showing him to be free of physical ailments that would tend to endanger the health of the public. A person practicing or teaching barbering without a certificate of registration is guilty of a violation of this chapter.

(2) It is unlawful for a barber, barber instructor, or student of barbering to practice the occupation of a barber or do barber work while he has an infectious, contagious, or communicable disease that would endanger the health of the public.

(3) If a barber or barber instructor, after securing his certificate, contracts a communicable, infectious, or contagious disease endangering the public health, the board of barbers shall revoke or suspend his certificate of registration until the board has satisfactory proof that the barber or barber instructor is no longer afflicted with the communicable, infectious, or contagious disease.

History: En. Sec. 1, Ch. 127, L. 1929; re-en. Sec. 3228.19, R.C.M. 1935; amd. Sec. 1, Ch. 183, L. 1937; amd. Sec. 33, Ch. 350, L. 1974; R.C.M. 1947, 66-401(part); amd. Sec. 6, Ch. 565, L. 1983; amd. Sec. 6, Ch. 274, L. 1985.

37-30-307. Fees — handicapped persons exempted — other fees prohibited. (1) The fee to be paid by an applicant for an examination to determine his fitness to receive a certificate of registration to practice barbering and for the issuance of the certificate shall be prescribed by the board.

(2) A person registered as a barber shall, before the expiration date established by rule of the department, annually pay a license fee, set by the board based on clerical and administrative costs, for the renewal of his certificate

of registration. If a barber fails to have the certificate renewed before the expiration date, the barber shall on renewal of the certificate of registration pay a penalty prescribed by the board in addition to the regular renewal fee. If a certificate of registration is not renewed within 1 year after the date of expiration, the barber is not entitled to have the certificate of registration renewed or a new certificate of registration issued without first applying for and taking the examination and paying the fees provided for in this section.

(3) However, physically handicapped persons trained for the barber profession by the department of social and rehabilitation services and certified by that department as having graduated from a barber college licensed by the board are not required to pay fees and are for a period of 1 year immediately following their training exempt from all except the sanitary provisions of this chapter.

(4) No other or additional license or fee may be imposed on barbers by a municipality or other subdivision of this state.

History: En. Sec. 11, Ch. 127, L. 1929; amd. Sec. 4, Ch. 18, L. 1931; re-en. Sec. 3228.29, R.C.M. 1935; amd. Sec. 4, Ch. 183, L. 1937; amd. Sec. 6, Ch. 150, L. 1939; amd. Sec. 3, Ch. 237, L. 1957; amd. Sec. 4, Ch. 48, L. 1969; amd. Sec. 1, Ch. 87, L. 1971; amd. Sec. 1, Ch. 301, L. 1973; amd. Sec. 1, Ch. 330, L. 1973; amd. Sec. 43, Ch. 350, L. 1974; amd. Sec. 2, Ch. 533, L. 1977; R.C.M. 1947, 66-411(1), (2); amd. Sec. 52, Ch. 345, L. 1981; amd. Sec. 6, Ch. 390, L. 1983; amd. Sec. 5, Ch. 565, L. 1983; amd. Sec. 7, Ch. 274, L. 1985.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Nondiscrimination in licensing, 49-3-204.

37-30-308. Display of certificate. A holder of a certificate of registration shall display it in a conspicuous place adjacent to or near his work chair.

History: En. Sec. 5, Ch. 127, L. 1929; re-en. Sec. 3228.23, R.C.M. 1935; amd. Sec. 3, Ch. 150, L. 1939; amd. Sec. 37, Ch. 350, L. 1974; R.C.M. 1947, 66-405(1).

37-30-309. Admission of licensee from other state. The department may issue, at the board's discretion, a barber's license without examination to a person who holds a current license as a barber from another jurisdiction if the board finds that the standards for licensure in the other jurisdiction are at least substantially equivalent to those prevailing in this state and that the applicant is otherwise qualified.

History: En. Sec. 11, Ch. 544, L. 1981.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-30-310. Instructor's certificate required — application and qualification — fees. (1) Except as provided in subsection (3), no person may for a fee instruct another in the practice of barbering unless that person holds an instructor's certificate issued by the board.

(2) The board shall issue an instructor's certificate to:

(a) any person engaged as an instructor in a barber college on October 1, 1983, upon payment of the certification fee; or

(b) any person who passes the instructor's examination given by the department and pays a certification fee established by the board.

(3) This section does not apply to persons paying the annual license fee required by 37-30-424.

History: En. Sec. 13, Ch. 565, L. 1983.

37-30-311. Instructor's certification examination. (1) An instructor's examination may be administered only to those persons who are high school graduates or possess the equivalent of a high school diploma and who:

(a) have been actively and continuously engaged in the practice of barbering in this state or in any other state requiring a barber's certificate or license, under laws substantially equivalent to this chapter, for at least 3 years immediately prior to application to take the instructor's certification examination; or

(b) have a barber's license or certificate of registration and have completed a course in barber instructor training of at least 500 hours of instruction at a barber school or college licensed by the board under this chapter.

(2) Instructor's examinations must be held at the time and place specified by the board, but must be held at least once a year.

(3) Anyone failing twice to pass an examination may not apply to retake the examination:

(a) sooner than 6 months after the date of the second failure; or

(b) until he has taken 200 hours of additional instructor training at a barber school or college licensed by the board.

History: **En. Sec. 14, Ch. 565, L. 1983; amd. Sec. 1, Ch. 4, L. 1987.**

Part 4

Licensing and Regulation of Barbershops and Schools

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-30-401. License required. A barbershop, school, or college must be conducted at a fixed place of establishment. A person or corporation may not open or maintain a barbershop, school, or college or hold himself or itself out as engaging in or conducting a barbershop, school, or college unless first licensed by the board.

History: **En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(part (8)).**

37-30-402. Application procedure for barbershops — investigation and inspection — hearing — grant or refusal of license. An application for a barbershop license shall be in writing and verified on a form prescribed by the board. On receipt by the department of an application for a license and on payment to the department of the initial inspection fee, the board shall have an investigation and inspection made as to the character of the applicant and, on notice and after hearing, shall report its findings to the department, which shall grant a license if the board finds that the applicant is of good character and that the proposed barbershop is equipped and will be conducted as required under this chapter. The application must be granted or refused within 30 days from the date of filing of the application or within 15 days after the hearing on the application if a hearing is held.

History: **En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch.**

237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(9); amd. Sec. 7, Ch. 565, L. 1983.

Cross-References

Oath defined, 1-1-201.

Proof of execution, Title 1, ch. 5, part 3.

Power of notary to take acknowledgments, 1-5-416.

Oaths, Title 1, ch. 6.

Affidavits, Title 26, ch. 1, part 10.

Licensing investigation and review — record access, 37-1-135.

Perjury, 45-7-201.

False swearing, 45-7-202.

37-30-403. Facilities required for licensure — inspection. (1) Before a license is issued to conduct a barbershop, school, or college in this state, the barbershop, school, or college must be inspected by the department and approved by the board and shall meet the following requirements:

(a) It must have both hot and cold running water connected with the city water supply. In villages or towns where running water is not available, hot-water tanks shall have not less than a 2-gallon capacity with gravity pressure. Wastewater shall be disposed of through some system carrying it away from the building. This shall be done by sewer connections or in a manner meeting the requirements of the department of health and environmental sciences rules, city ordinances, and having the approval of the city or village board of health, as required by law.

(b) The headrest of a barber chair must be equipped so that each customer will be supplied with a clean, fresh paper or towel.

(c) It must have a closed cabinet for each chair, to keep instruments in when not in use, and must have proper sterilization equipment for immersing instruments before use on each customer.

(d) It must have a sufficient number of towels so that each customer will be served with a clean, laundered towel.

(e) It must be well-lighted, well-ventilated, and kept in a clean, orderly, and sanitary condition at all times.

(f) It must pay to the department the required fee.

(2) Barbershops, barber schools, or colleges shall be open for inspection during business hours, to members of the department.

(3) The board shall inspect annually each barbershop, school, or college to determine compliance with statutory requirements and board rules. The board may suspend or revoke the license of any barbershop, school, or college that violates statutory requirements or board rules.

(4) The board may grant a temporary license to a barbershop until such time as the initial inspection is completed.

(5) Barber schools and colleges must also comply with the provisions of 37-30-406 and 37-30-407.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(part); amd. Sec. 7, Ch. 544, L. 1981; amd. Sec. 8, Ch. 565, L. 1983.

Cross-References

Licensing investigation and review — record access, 37-1-135.

37-30-404. Barber schools — operator — license fee. (1) A barber school or college operating in this state must have in charge a person who has had 3 years' continuous experience as a barber and who is licensed as a barber instructor under 37-30-310.

(2) The owner of the school or college shall first secure a license to operate granted by the board and issued by the department, on payment of an annual license fee prescribed by the board, and shall keep the license prominently displayed.

(3) The owner shall, before commencing business, file with the secretary of state a bond to this state, which shall be approved by the attorney general, in the sum of $5,000, conditioned on the faithful compliance of the barber school or college with this chapter and the payment of judgments that may be obtained against the school, college, or owner on account of fraud, misrepresentation, or deceit practiced by them or by their agents.

(4) All barber schools or colleges shall keep prominently displayed a substantial sign as a barber school or barber college.

(5) On receiving students, all barber schools or colleges shall immediately apply to the department for student permits on blank forms prescribed by the board.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(part (8)); amd. Sec. 53, Ch. 345, L. 1981; amd. Sec. 8, Ch. 544, L. 1981; amd. Sec. 9, Ch. 565, L. 1983.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-30-405. Barber school license — application procedure. (1) A person desiring to conduct a barber school or college must make application for the license required by 37-30-401 on forms provided by the department. The application must:

(a) include the name and address of the owners of the school and of the school itself;

(b) show that the person in charge has the experience required by 37-30-404;

(c) show that the applicant is of good moral character and possesses any education, training, and experience required by this chapter and any reasonable rules of the board;

(d) include a detailed floor plan of the school showing that it will have adequate space to conduct the activities of the school and that it will have at least two public restrooms, a storage room, a classroom, and a manager's office;

(e) include the names and addresses of the instructors;

(f) include a copy of any school rules;

(g) show that the school and its owner or manager can and will comply with the requirements of this chapter and the rules of the board; and

(h) be accompanied by the application and initial inspection fee established by the board.

(2) Upon receipt of a completed application, the department must conduct an inspection of the school to determine its compliance with 37-30-403, 37-30-406, 37-30-407, and this section. The board must issue the license if the school, its owner, and manager have:

(a) filed the bond required under 37-30-404; and

(b) complied with the requirements of this chapter and the rules of the board.

History: **En. Sec. 10, Ch. 565, L. 1983.**

37-30-406. Barber schools — curriculum and students. (1) A barber school or college licensed under this chapter shall require the completion by every student in not less than 11 months and not more than 15 months of 2,000 hours of instruction for graduation. Hours of training must be allocated in the following amounts to the courses or subjects specified:

(a) haircutting, 300 hours;
(b) shampooing, 150 hours;
(c) facials, 50 hours;
(d) styling, 300 hours;
(e) permanent waving, 300 hours;
(f) hair replacements, 50 hours;
(g) scalp treatments, 50 hours;
(h) chemical straightening, 50 hours;
(i) hair coloring, 200 hours;
(j) shaving, 25 hours;
(k) sales and products knowledge, 125 hours;
(l) shop management and bookkeeping, 50 hours;
(m) state barber laws, rules, and regulations, 25 hours;
(n) business ethics and personal grooming, 25 hours; and
(o) balance to be used at the discretion of the school, 300 hours.

(2) Within the limits prescribed by subsection (1), the course of study at a school or college must be designed to prepare a student to successfully complete the examinations required by 37-30-303 and 37-30-305.

(3) A barber school or college licensed under this chapter:

(a) shall use a grading system for each student, keep a record of the attendance of each student, and require satisfactory completion of regular examinations, of which records must be kept;

(b) shall maintain the records required by subsection (3)(a) for inspection by the board;

(c) shall certify to the board a copy of a student's transcript within 3 days of his completion of 2,000 hours of study and graduation;

(d) shall furnish to a student at the time of his initial registration a statement showing the cost of tuition, books, equipment, supplies, and any other charges to be made prior to graduation;

(e) shall employ one instructor for every 15 students;

(f) may not begin instruction at a new school with less than 7 students;

(g) may not require a student to take more than 8 hours of classroom instruction a day;

(h) may not allow a student to engage in the practice of barbering upon the public until he has completed 100 hours of instruction at the school; and

(i) may not enroll any student transferring from another school until a certified transcript of the student's course work has been received and approved by the board.

History: **En. Sec. 11, Ch. 565, L. 1983.**

37-30-407. Barber schools — operating requirements. (1) A barber school or college licensed or to be licensed under this chapter:

(a) may not allow any person to sleep in or use for residential or any other purpose tending to make unsanitary any part of the school or college used for instructional purposes;

(b) may not allow a barbershop to be operated in conjunction with the school or college;

(c) may not allow a student, other than a student teacher, to teach other students;

(d) may not advertise the price of any barbering service offered to members of the public;

(e) shall use any schedule of prices adopted by rule of the board;

(f) may not engage in false or deceptive advertising;

(g) may not advertise in any manner until a license has been received;

(h) shall notify the board of any change in the management of the school or college and of the discharge of any barber certified under this chapter; and

(i) may employ only instructors licensed under this chapter.

(2) It is the intent of the legislature, for the purposes of (d) and (e) of subsection (1) to avail itself of the immunity from the Sherman Antitrust Act (15 U.S.C. 1, et seq.) provided under the decision of the United States supreme court in Parker v. Brown, 317 US 341 (1943).

History: En. Sec. 12, Ch. 565, L. 1983.

37-30-408 through 37-30-410 reserved.

37-30-411. Only licensed barber eligible for barbershop license. A barbershop license may not be issued to anyone except one who holds a valid barber's certificate under this chapter, and a barbershop may not be maintained or conducted except by one who holds a barbershop license issued by the department under this chapter. This certificate or license is not transferable as to person or place.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(10).

37-30-412. Barbershop owner's duty to monitor employees. An owner or manager of a barbershop licensed under this chapter shall make certain that each barber employed holds a certificate to practice barbering in this state and that employees observe the sanitary rules of the department of health and environmental sciences and the department of commerce and report to the department of commerce the name of a person practicing barbering therein who has a communicable disease.

History: En. Sec. 3, Ch. 127, L. 1929; amd. Sec. 1, Ch. 18, L. 1931; re-en. Sec. 3228.21, R.C.M. 1935; amd. Sec. 3, Ch. 183, L. 1937; amd. Sec. 1, Ch. 150, L. 1939; amd. Sec. 1, Ch. 237, L. 1957; amd. Sec. 1, Ch. 48, L. 1969; amd. Sec. 35, Ch. 350, L. 1974; R.C.M. 1947, 66-403(part); amd. Sec. 3, Ch. 274, L. 1981.

37-30-413. Display of price schedule. A barbershop shall display a schedule of prices in a conspicuous place.

History: En. Sec. 5, Ch. 127, L. 1929; re-en. Sec. 3228.23, R.C.M. 1935; amd. Sec. 3, Ch. 150, L. 1939; amd. Sec. 37, Ch. 350, L. 1974; R.C.M. 1947, 66-405(3).

37-30-414 through 37-30-420 reserved.

37-30-421. Display of license. A license to operate a barbershop, school, or college shall specify the name of the licensee and shall be kept in a conspicuous place in the barbershop, school, or college. A barbershop, school, or college may not be conducted or held out as being conducted under any name except the name appearing as licensee on the license issued by the department.

History: **En. Sec. 5, Ch. 127, L. 1929; re-en. Sec. 3228.23, R.C.M. 1935; amd. Sec. 3, Ch. 150, L. 1939; amd. Sec. 37, Ch. 350, L. 1974; R.C.M. 1947, 66-405(2).**

37-30-422. Maintenance of sanitary conditions. Barbershops, barber schools, and barber colleges shall be operated and maintained in a sanitary condition in order to preserve the public health and prevent the spread of disease. The board of barbers in consultation with the department of health and environmental sciences may adopt rules to preserve the public health and prevent the spread of disease.

History: **En. Sec. 1, Ch. 127, L. 1929; re-en. Sec. 3228.19, R.C.M. 1935; amd. Sec. 1, Ch. 183, L. 1937; amd. Sec. 33, Ch. 350, L. 1974; R.C.M. 1947, 66-401(part); amd. Sec. 9, Ch. 544, L. 1981.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-30-423. Initial inspection fee — renewal. (1) In addition to the fees and charges provided by law on March 11, 1939, barbershops established prior to that date and which had been under the inspection of the board shall pay an annual license fee set by the board based on clerical and administrative costs. Barbershops established after March 11, 1939, shall pay an initial inspection fee prescribed by the board for the first year or portion thereof and shall pay an annual license fee set by the board.

(2) Barbershop, school, or college licenses, once issued, expire each year on the date established by rule of the department, and an owner or manager of a barbershop, school, or college which continues in active operation shall annually, before the expiration date, renew his barbershop, school, or college license and pay the required fee. A barbershop which fails to have the license renewed before the expiration date each year shall, on renewal, pay a penalty prescribed by the board, and a barber school or college which fails to have the license renewed before the expiration date each year shall, on renewal, pay a penalty prescribed by the board.

History: **En. Sec. 11, Ch. 127, L. 1929; amd. Sec. 4, Ch. 18, L. 1931; re-en. Sec. 3228.29, R.C.M. 1935; amd. Sec. 4, Ch. 183, L. 1937; amd. Sec. 6, Ch. 150, L. 1939; amd. Sec. 3, Ch. 237, L. 1957; amd. Sec. 4, Ch. 48, L. 1969; amd. Sec. 1, Ch. 301, L. 1973; amd. Sec. 1, Ch. 330, L. 1973; amd. Sec. 43, Ch. 350, L. 1974; amd. Sec. 2, Ch. 533, L. 1977; R.C.M. 1947, 66-411(part); amd. Sec. 54, Ch. 345, L. 1981; amd. Sec. 7, Ch. 390, L. 1983.**

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-30-424. Fee for advanced barber training program, clinic, or seminar. Any person not a resident of this state conducting in this state any advanced barber training program, clinic, or seminar for barbers as defined in this chapter shall pay an annual license fee prescribed by the board to the department or a 10-day license fee prescribed by the board and display the license while operating. Any such advanced barber training program, clinic, or seminar may be inspected by the department at reasonable times during operation.

History: En. Sec. 11, Ch. 127, L. 1929; amd. Sec. 4, Ch. 18, L. 1931; re-en. Sec. 3228.29, R.C.M. 1935; amd. Sec. 4, Ch. 183, L. 1937; amd. Sec. 6, Ch. 150, L. 1939; amd. Sec. 3, Ch. 237, L. 1957; amd. Sec. 4, Ch. 48, L. 1969; amd. Sec. 1, Ch. 301, L. 1973; amd. Sec. 1, Ch. 330, L. 1973; amd. Sec. 43, Ch. 350, L. 1974; amd. Sec. 2, Ch. 533, L. 1977; R.C.M. 1947, 66-411(part); amd. Sec. 55, Ch. 345, L. 1981; amd. Sec. 15, Ch. 565, L. 1983.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-30-425. Renumbered 37-30-502. Sec. 3, Ch. 465, L. 1989.

Part 5

Remedies for Violation

37-30-501. Penalty. A person practicing the occupation of a barber or barber instructor without first having obtained a license under this chapter or a person knowingly employing a barber or barber instructor who has not obtained a license or a person who falsely pretends to be qualified to practice the occupation of a barber or barber instructor or a person who otherwise violates this chapter is guilty of a misdemeanor and on conviction shall be fined not less than $25 or more than $200 or imprisoned in the county jail for not less than 10 days or more than 90 days, or both. In addition, the board may after hearing suspend or revoke a barber's or barber instructor's certificate of registration or license to operate a barbershop, school, or college, or both, by reason of the person willfully violating this chapter or persistently failing to conform to the rules adopted by the board.

History: En. Sec. 10, Ch. 127, L. 1929; amd. Sec. 2, Ch. 18, L. 1931; re-en. Sec. 3228.28, R.C.M. 1935; amd. Sec. 5, Ch. 150, L. 1939; amd. Sec. 42, Ch. 350, L. 1974; R.C.M. 1947, 66-410; amd. Sec. 17, Ch. 565, L. 1983.

Cross-References

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

37-30-502. Refusal, suspension, or revocation of license. The board may, after notice and opportunity for a hearing, refuse to issue or renew or may suspend or revoke the license of a barber or the license of any barbershop, barber school, or college for any of the following acts of a licensee:

(1) the violation of any of the provisions of 37-30-308; 37-30-403, except subsection (1)(f); 37-30-406; 37-30-407; 37-30-412; 37-30-413; or 37-30-421;

(2) malpractice or incompetency;

(3) continued practice by a person knowingly having an infectious or contagious disease;

(4) advertising by means of knowingly false or deceptive statements;

(5) advertising, practicing, or attempting to practice under a trade name other than one's own;

(6) habitual drunkenness or addiction to the use of morphine, cocaine, or other habit-forming drugs;

(7) the violation of any of the rules adopted pursuant to 37-30-203, including rules defining unprofessional conduct.

History: En. 66-403.1 by Sec. 36, Ch. 350, L. 1974; R.C.M. 1947, 66-403.1; amd. Sec. 10, Ch. 544, L. 1981; amd. Sec. 16, Ch. 565, L. 1983; amd. Sec. 91, Ch. 370, L. 1987; amd. Sec. 1, Ch. 465, L. 1989; Sec. 37-30-425, MCA 1987; redes. 37-30-502 by Sec. 3, Ch. 465, L. 1989.

Compiler's Comments

1989 Amendment: Near beginning of introductory clause, before "refuse", deleted "either", after "revoke" inserted "the license of a barber or the licenses of any", after "college" deleted "license", after "for any" deleted "one or combination", and at end substituted "acts of a licensee" for "causes"; near end of (1) substituted "or" for "and"; in (2), before "malpractice" and before "incompetency", deleted "gross"; at end of (7) inserted "including rules defining unprofessional conduct"; and made minor changes in phraseology and punctuation.

Cross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

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CHAPTER 31

COSMETOLOGY

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Chapter Cross-References
Electrology, Title 37, ch. 32.

Part 1

General

37-31-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Practice and teaching of cosmetology" includes work generally and usually included in the terms "hairdressing", "manicuring", and "beauty culture" and performed in so-called hairdressing and beauty shops, booths, or by itinerant cosmetologists, which work is done for the embellishment, cleanliness, and beautification of the hair, scalp, face, arms, feet, or hands. The practice and teaching of cosmetology shall not be construed to include itinerant cosmetologists who perform their services without compensation for demonstration purposes in any regularly established store or place of business holding a license from the state of Montana as such store or place of business.

(2) "Cosmetological establishment" means premises, building, or part of a building in which is practiced a branch or combination of branches of cosmetology or the occupation of a hairdresser and cosmetician or cosmetologist and which must have a manager-operator in charge.

(3) "Board" means the board of cosmetologists provided for in 2-15-1857.

(4) "Booth" means any part of a cosmetological establishment or manicuring shop that is rented or leased for the performance of cosmetologist services, as specified in 39-51-204(1)(l).

(5) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(6) "Manicuring" includes nail care of the hands and feet and the application and maintenance of artificial nails.

(7) "Manicuring shop" means premises, a building, or part of a building in which the art of manicuring is practiced.

History: En. Sec. 2, Ch. 104, L. 1929; re-en. Sec. 3228.2, R.C.M. 1935; amd. Sec. 2, Ch. 222, L. 1939; amd. Sec. 2, Ch. 20, L. 1955; amd. Sec. 2, Ch. 244, L. 1961; amd. Sec. 1, Ch. 175, L. 1974; amd. Sec. 64, Ch. 350, L. 1974; R.C.M. 1947, 66-802; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 260, L. 1985; amd. Sec. 1, Ch. 602, L. 1985; amd. Sec. 2, Ch. 88, L. 1989.

Compiler's Comments
1989 Amendment: In first sentence of definition of practice and teaching of cosmetology, after "beauty shops", inserted "booths"; inserted definition of booth; and made minor changes in form.

Cross-References
Practice of barbering defined, 37-30-101.

37-31-102. Exemptions. Nothing in this chapter prohibits:

(1) service in case of emergency or domestic administration without compensation;

(2) services by persons authorized under the laws of this state to practice dentistry, the healing arts, or mortuary science; or

(3) services by barbers lawfully engaged in the performance of the usual and ordinary duties of their vocation or in cutting women's hair.

History: En. Sec. 18, Ch. 104, L. 1929; re-en. Sec. 3228.18, R.C.M. 1935; amd. Sec. 2, Ch. 101, L. 1977; R.C.M. 1947, 66-818.

Cross-References

Practice of barbering defined, 37-30-101.

Part 2

Board of Cosmetologists

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1857.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-31-201. Organization — seal. (1) The board shall annually, before March 1, elect from its number a president, vice-president, and secretary-treasurer.

(2) The board shall adopt a seal and authenticate its acts.

History: (1)En. Sec. 5, Ch. 104, L. 1929; re-en. Sec. 3228.5, R.C.M. 1935; amd. Sec. 5, Ch. 222, L. 1939; amd. Sec. 66, Ch. 350, L. 1974; Sec. 66-805, R.C.M. 1947; (2)En. Sec. 6, Ch. 104, L. 1929; re-en. Sec. 3228.6, R.C.M. 1935; amd. Sec. 2, Ch. 80, L. 1941; amd. Sec. 5, Ch. 244, L. 1961; amd. Sec. 67, Ch. 350, L. 1974; amd. Sec. 1, Ch. 305, L. 1977; Sec. 66-806, R.C.M. 1947; R.C.M. 1947, 66-805, 66-806(2).

Cross-References

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

37-31-202. Compensation of members — expenses. Each member of the board is entitled to receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 9, Ch. 104, L. 1929; re-en. Sec. 3228.9, R.C.M. 1935; amd. Sec. 8, Ch. 222, L. 1939; amd. Sec. 135, Ch. 147, L. 1963; amd. Sec. 1, Ch. 133, L. 1967; amd. Sec. 1, Ch. 224, L. 1974; amd. Sec. 70, Ch. 350, L. 1974; amd. Sec. 28, Ch. 439, L. 1975; amd. Sec. 1, Ch. 531, L. 1977; R.C.M. 1947, 66-809(part); amd. Sec. 25, Ch. 474, L. 1981.

37-31-203. Rulemaking powers. The board shall prescribe rules for:

(1) the conduct of its business;

(2) the qualification, examination, and registration of applicants to practice cosmetology or manicuring or to teach cosmetology;

(3) the qualification and registration of applicants for manager-operator licenses;

(4) the regulation and instruction of apprentices and students;

(5) the conduct of schools of cosmetology and schools of manicuring for apprentices and students;

(6) the qualification and registration of applicants for booth rental licenses; and

(7) generally the conduct of the persons, firms, or corporations affected by this chapter.

History: En. Sec. 6, Ch. 104, L. 1929; re-en. Sec. 3228.6, R.C.M. 1935; amd. Sec. 2, Ch. 80, L. 1941; amd. Sec. 5, Ch. 244, L. 1961; amd. Sec. 67, Ch. 350, L. 1974; amd. Sec. 1, Ch. 305,

L. 1977; R.C.M. 1947, 66-806(1); amd. Sec. 15, Ch. 22, L. 1979; amd. Sec. 2, Ch. 602, L. 1985; amd. Sec. 3, Ch. 88, L. 1989.

Compiler's Comments

1989 Amendment: Inserted (6) regarding rules for booth rental licenses; and made minor changes in form.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Duties of boards, 37-1-131.

37-31-204. Sanitary rules. The board, subject to the approval of the department of health and environmental sciences, shall prescribe sanitary rules it considers necessary, with particular reference to the precautions necessary to be employed to prevent the creation and spread of infectious and contagious diseases.

History: En. Sec. 12, Ch. 104, L. 1929; re-en. Sec. 3228.12, R.C.M. 1935; amd. Sec. 72, Ch. 350, L. 1974; R.C.M. 1947, 66-812.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-31-301. Prohibited acts. (1) Without an appropriate license issued under this chapter, it shall be unlawful to:

(a) practice cosmetology for compensation;

(b) own, manage, operate, or conduct a school of cosmetology or school of manicuring;

(c) manage or operate a cosmetology shop, manicuring shop, booth, or beauty parlor;

(d) teach in a school of cosmetology or school of manicuring;

(e) practice manicuring for compensation;

(f) practice as a finger waver.

(2) It is unlawful:

(a) for any person who owns, manages, or controls a cosmetology shop to employ or use an unlicensed person as a cosmetologist or manicurist;

(b) to operate a cosmetology school without complying with all of the regulations of 37-31-311;

(c) to practice cosmetology in any place other than in a licensed establishment as provided in this chapter, except when a licensed operator is requested by a customer to go to a place other than a licensed establishment and is sent to such customer from a licensed establishment;

(d) for any person who owns, manages, or controls a manicuring shop to employ or use an unlicensed person as a manicurist;

(e) to operate a manicuring school without complying with 37-31-311;

(f) to violate any of the provisions of this chapter.

History: En. Sec. 17, Ch. 104, L. 1929; amd. Sec. 1, Ch. 13, L. 1931; re-en. Sec. 3228.17, R.C.M. 1935; amd. Sec. 14, Ch. 222, L. 1939; amd. Sec. 1, Ch. 140, L. 1959; R.C.M. 1947, 66-817(A), (B); amd. Sec. 3, Ch. 602, L. 1985; amd. Sec. 4, Ch. 88, L. 1989.

Compiler's Comments

1989 Amendment: In (1)(c), after "manicuring shop", inserted "booth".

37-31-302. License required to practice, teach, or operate shop, booth, or school. (1) No person may practice or teach cosmetology or practice or teach manicuring without a license.

(2) No place may be used or maintained for the teaching of cosmetology or manicuring for compensation except under a certificate of registration.

(3) No person may operate or manage a beauty shop or a manicuring shop or practice cosmetology or manicuring without a manager-operator license.

(4) No person may operate or conduct a school of cosmetology or a school of manicuring and teach the art of cosmetology or manicuring without a license to teach cosmetology.

(5) No person may manage or operate a booth without a booth rental license.

(6) A person, firm, partnership, or corporation desiring to operate a cosmetological establishment shall make an application to the department for a certificate of registration and license. The application shall be accompanied by the annual registration fee.

(7) No license may be issued until the inspection fees required in 37-31-312 have been paid.

History: En. Sec. 1, Ch. 104, L. 1929; re-en. Sec. 3228.1, R.C.M. 1935; amd. Sec. 1, Ch. 222, L. 1939; amd. Sec. 1, Ch. 80, L. 1941; amd. Sec. 1, Ch. 211, L. 1945; amd. Sec. 1, Ch. 20, L. 1955; amd. Sec. 1, Ch. 244, L. 1961; amd. Sec. 1, Ch. 85, L. 1974; amd. Sec. 63, Ch. 350, L. 1974; R.C.M. 1947, 66-801; amd. Sec. 4, Ch. 106, L. 1981; amd. Sec. 4, Ch. 602, L. 1985; amd. Sec. 5, Ch. 88, L. 1989.

Compiler's Comments

1989 Amendment: Inserted (5) requiring a booth rental license; and made minor changes in form.

37-31-303. Application for license to practice or teach. An applicant for a license to practice or teach cosmetology or for a license to practice manicuring must qualify by filing an application prescribed by the board and by taking and passing the examination prescribed by the board. The license must be renewed annually under 37-31-322.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(3); amd. Sec. 5, Ch. 602, L. 1985; amd. Sec. 6, Ch. 88, L. 1989.

Compiler's Comments

1989 Amendment: At end of first sentence, after "board", deleted "and given by the department, subject to 37-1-101".

37-31-304. Qualifications of applicants for license to practice. (1) Before a person may practice cosmetology, he must obtain a license to practice cosmetology from the department. Before a person may practice manicuring, he must obtain a license to practice manicuring from the department unless he is licensed to practice cosmetology.

(2) (a) To be eligible to take the examination to practice cosmetology, the applicant must be not less than 18 years of age and of good moral character and must have completed 2 years of high school or possess the equivalent of a high school diploma recognized by the superintendent of public instruction. The applicant must have completed a continuous course of study of at least 2,000 hours in a registered beauty school, which course of study has been distributed over a period of not less than 10 months or more than 14 months, and must have received a diploma from the beauty school or must have completed the course of study in cosmetology prescribed by the board.

(b) A person qualified under subsection (2)(a) shall file with the department a written application to take the examination and shall deposit with the department the required examination fee and pass an examination as to his fitness to practice cosmetology.

(3) (a) To be eligible to take the examination to practice manicuring, an applicant must be not less than 18 years of age, be of good moral character, possess a high school diploma, an equivalent of a high school diploma recognized by the superintendent of public instruction, or a certificate of completion from a vocational-technical center program, and have completed a course of study prescribed by the board in a registered school of cosmetology or a registered school of manicuring.

(b) A person qualified under subsection (3)(a) must file with the department a written application to take the examination and deposit with the department the required examination fee.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(1); amd. Sec. 2, Ch. 260, L. 1985; amd. Sec. 6, Ch. 602, L. 1985; amd. Sec. 34, Ch. 658, L. 1987; amd. Sec. 1, Ch. 520, L. 1989.

Compiler's Comments

1989 Amendment: In first sentence of (2)(a), after "years of age", deleted "a graduate of the 8th grade" and after "character" inserted "and must have completed 2 years of high school or possess the equivalent of a high school diploma recognized by the superintendent of public instruction", and at end of (2)(a), after "board", deleted "of public education".

Cross-References

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-31-305. Qualifications of applicants for license to teach. (1) Before a person may teach manicuring to persons seeking only to be licensed to practice manicuring or teach cosmetology, he must obtain from the department a license to teach cosmetology.

(2) To be eligible to take an examination to obtain a license to teach cosmetology, a person must:

(a) be a graduate of high school or possess an equivalent of a high school diploma recognized by the superintendent of public instruction; and

(b) (i) have a license to practice cosmetology issued by the department and have received a diploma from a registered school of cosmetology approved by the board, certifying satisfactory completion of 650 hours of student teacher training; or

(ii) have been actively engaged as a beauty operator for 3 continuous years immediately prior to taking the teachers' examination.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(2); amd. Sec. 5, Ch. 106, L. 1981; amd. Sec. 3, Ch. 260, L. 1985; amd. Sec. 7, Ch. 602, L. 1985.

Cross-References

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-31-306. Reciprocity. A person who is licensed to practice cosmetology or is licensed as a manager-operator in another state may be eligible for reciprocity licensing in this state if he fulfills the requirements of this chapter and the rules adopted under it, other than those relating to examination. However, he may be licensed without examination only if the state in which he is licensed grants the same privilege to persons licensed in this state who seek licensure as cosmetologists or manager-operators in that state.

History: En. 66-808.1 by Sec. 5, Ch. 533, L. 1977; R.C.M. 1947, 66-808.1; amd. Sec. 6, Ch. 106, L. 1981.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-31-307. Temporary license pending examination. The board may authorize the department to grant to a graduate of a registered school of any state, on the payment of the fee prescribed by law, a temporary license authorizing the graduate to practice cosmetology under the supervision of a licensed cosmetologist in the practice of hairdressing and beauty culture or to practice manicuring under the supervision of a licensed manicurist for a period not to exceed 90 days or until the next examination is held by the department and the results are announced. No temporary license may be issued except on the presentation by the applicant of a certificate of graduation from such a registered school. A temporary license is not renewable.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(5); amd. Sec. 1, Ch. 460, L. 1979; amd. Sec. 7, Ch. 106, L. 1981; amd. Sec. 1, Ch. 29, L. 1989.

Compiler's Comments

1989 Amendment: In first sentence after "graduate to practice", inserted "cosmetology" and after "beauty culture" inserted "or to practice manicuring under the supervision of a licensed manicurist"; and made minor changes in phraseology.

37-31-308. Examination — reexamination — exemption for handicapped persons. (1) Examinations for a license to practice cosmetology or manicuring or to teach cosmetology shall be held at places and times specified by the board. The examinations shall be supervised by the board. The examinations may not be confined to a specific method or system. The examinations shall be conducted by persons who hold a current license to practice in the profession for which the applicant is being examined.

(2) Anyone failing twice to pass the examination for a license to practice cosmetology may not apply to retake the examination:

(a) sooner than 6 months after the date of the second failure; or

(b) until he has taken 200 hours additional training at a registered school of cosmetology approved by the board.

(3) Anyone failing twice to pass the examination for a license to practice manicuring must meet the additional requirements prescribed by the board before applying to retake the examination.

(4) Anyone failing twice to pass the examination for a license to teach cosmetology must wait 1 year before reapplying to take the examination. Upon reapplying, the applicant must provide certification of completion of 500 hours of teacher training during that year in a registered school licensed as a teacher training unit.

(5) Physically handicapped persons trained for cosmetology or manicuring by the department of social and rehabilitation services shall, for a period of 1 year immediately following their graduation, be exempt from the examination and the fees described in 37-31-323. On certification from the department of social and rehabilitation services that a department of social and rehabilitation services beneficiary has successfully completed the required training in a beauty school or manicuring school, the department shall issue the person the necessary certificate or license to practice the profession in this state.

History: (1), (3)En. Sec. 8, Ch. 104, L. 1929; amd. Sec. 1, Ch. 85, L. 1935; re-en. Sec. 3228.8, R.C.M. 1935; amd. Sec. 7, Ch. 222, L. 1939; amd. Sec. 69, Ch. 350, L. 1974; Sec. 66-808, R.C.M. 1947; (2)En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; Sec. 66-803, R.C.M. 1947; R.C.M. 1947, 66-803(4), 66-808; amd. Sec. 8, Ch. 106, L. 1981; amd. Sec. 4, Ch. 260, L. 1985; amd. Sec. 8, Ch. 602, L. 1985; amd. Sec. 7, Ch. 88, L. 1989.

Compiler's Comments

1989 Amendment: In second sentence of (1) substituted "supervised" for "conducted" and substituted "board" for "department, subject to 37-1-101" and inserted fourth sentence relating to persons who conduct examinations.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

37-31-309. Booth rental license. No person may receive a booth rental license under 37-31-302 without proving to the satisfaction of the board that the booth will be used and maintained in compliance with the rules and regulations promulgated by the board, including sanitary rules prescribed under 37-31-204.

History: En. Sec. 9, Ch. 88, L. 1989.

37-31-310 reserved.

37-31-311. Schools — certificate of registration — requirements — bond — curriculum. (1) No person, firm, partnership, or corporation may operate a school for the purpose of teaching cosmetology for compensation or for the purpose of teaching manicuring for compensation unless a certificate of registration has been first obtained from the department. Application for the certificate shall be filed with the department on a form prescribed by the board.

(2) No school for teaching cosmetology may be granted a certificate of registration unless it complies or can comply with the following requirements:

(a) It shall have in its employ a licensed teacher who is at all times in the immediate supervision of the work of the school, or other teachers the board determines are necessary for the proper conduct of the school. There may not be more than 25 students to each teacher.

(b) It shall possess apparatus and equipment the board determines is necessary for the ready and full teaching of all subjects or practices of cosmetology.

(c) It shall maintain a school term of not less than 2,000 hours and shall prescribe a course of practical training and technical instruction equal to the requirements for board examinations, which course of training and technical instruction shall be prescribed by the board.

(d) It shall keep a daily record of the attendance of each student, establish grades, and hold examinations before issuing diplomas.

(e) No owner or person in charge of a school of cosmetology may permit a person to sleep in or use for residential purposes, or any other purpose which would tend to make the room unsanitary, a room used wholly or in part for a school of cosmetology.

(3) No school for teaching manicuring may be granted a certificate of registration unless it complies with subsections (2)(a) and (2)(d) and the following requirements:

(a) It must possess apparatus and equipment the board determines necessary for the ready and full teaching of all subjects or practices of manicuring.

(b) It must maintain a school term and a course of practical training and technical instruction as prescribed by the board.

(c) No owner or person in charge of a school of manicuring may permit a person to sleep in or use for residential purposes, or any other purpose that would tend to make the room unsanitary, a room used wholly or in part for a school of manicuring.

(4) Licenses or certificates of registration for schools of cosmetology and schools of manicuring may be refused, revoked, or suspended, as provided in 37-31-331.

(5) No teacher or student teacher may be permitted to practice cosmetology or manicuring on the public in a school of cosmetology or a school of manicuring. A school that enrolls student teachers for a course of student teacher training may not have, at any one time, more than one student teacher for each full-time licensed teacher actively engaged at the school. The student teachers may not substitute for full-time teachers.

(6) The board may make further rules necessary for the proper conduct of schools of cosmetology and schools of manicuring.

(7) The board shall require the person, firm, partnership, or corporation operating a school of cosmetology or a school of manicuring to furnish a good and sufficient bond in the amount of $5,000 and in a form and manner prescribed by the board.

(8) No professional beauty shop or manicuring shop may be operated in connection with a school of cosmetology or school of manicuring.

(9) The board may, by rule, establish a suitable curriculum for teachers' training in registered schools of cosmetology.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L.

1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(6) thru (8); amd. Sec. 9, Ch. 602, L. 1985.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-31-312. Inspection. (1) The department shall appoint one or more inspectors, each of whom shall devote his time to inspecting beauty parlors and performing other duties as the department may direct. The inspectors may enter a beauty parlor, manicuring shop, booth, school of cosmetology, or school of manicuring during business hours for the purpose of inspection, and the refusal of a licensee to permit the inspection during business hours is cause for revocation of the license.

(2) Upon application for a license, any cosmetological establishment or manicuring shop must pay an initial inspection fee prescribed by the board.

(3) The board may authorize the department to grant to a cosmetological establishment or manicuring shop, upon payment of the initial inspection fee, a temporary permit authorizing the cosmetological establishment or manicuring shop to operate for a period of not to exceed 90 days or until the inspector is able to make the inspection, whichever event occurs first. This temporary permit is not renewable.

(4) The board shall conduct an annual inspection of each cosmetological establishment and manicuring shop in the state.

History: (1)En. Sec. 13, Ch. 104, L. 1929; re-en. Sec. 3228.13, R.C.M. 1935; amd. Sec. 11, Ch. 222, L. 1939; amd. Sec. 73, Ch. 350, L. 1974; Sec. 66-813, R.C.M. 1947; (2), (3)En. Sec. 66-813.1 by Sec. 2, Ch. 85, L. 1974; amd. Sec. 2, Ch. 305, L. 1977; Sec. 66-813.1, R.C.M. 1947; R.C.M. 1947, 66-813, 66-813.1; (4)En. Sec. 9, Ch. 106, L. 1981; amd. Sec. 56, Ch. 345, L. 1981; amd. Sec. 5, Ch. 260, L. 1985; amd. Sec. 10, Ch. 602, L. 1985; amd. Sec. 8, Ch. 88, L. 1989.

Compiler's Comments

1989 Amendment: In second sentence of (1), after "manicuring shop", inserted "booth".

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-31-313 through 37-31-320 reserved.

37-31-321. Issuance of licenses and certificates. If the board finds that an applicant for examination or for certificate of registration has complied with the requirements of this chapter and has paid the required fee, the board shall admit the applicant to examination and shall authorize the department to issue a license or certificate of registration to those who have successfully passed the examination or are entitled to the certificate of registration under this chapter.

History: En. Sec. 7, Ch. 104, L. 1929; re-en. Sec. 3228.7, R.C.M 1935; amd. Sec. 6, Ch. 222, L. 1939; amd. Sec. 68, Ch. 350, L. 1974; R.C.M. 1947, 66-807.

37-31-322. Renewal — continuing education — delinquency fee. (1) Licenses and certificates may be issued for no longer than 1 year unless otherwise provided by rule. Licenses and certificates expire on December 31 unless otherwise provided by rule or renewed for the next year or renewal period. Licenses and certificates may be renewed by application made prior to December 31 of each year, unless otherwise provided, and the payment of a required renewal fee. Expired licenses and certificates may be renewed under rules made by the board, but the right to renew an expired license or certificate terminates after 10 years of nonpayment. The board may provide by rule for a change in the renewal date and renewal period for the manager-operator and salon owner category. The renewal fee may not exceed twice the fee for a 2-year renewal or three times the fee for a 3-year renewal and shall be as set by the board.

(2) In addition to the foregoing requirements for renewal, persons applying for the renewal of licenses to teach cosmetology must have fulfilled the following additional requirements:

(a) During each year, an active teacher, either full-time or part-time, must have successfully completed 30 hours' professional teacher training at a school approved by the board.

(b) A person holding a license to teach cosmetology but not actively engaged either full-time or part-time in teaching cosmetology or manicuring during the preceding year may renew the license by paying the required fee. A person holding a license to teach cosmetology but not actively engaged in teaching cosmetology or manicuring either full-time or part-time for the preceding year or longer and wishing to resume active teaching of cosmetology or manicuring must successfully complete 30 hours' professional teacher training at a school approved by the board before resuming active teaching. However, the foregoing provisions do not prevent the board, under rules it adopts, from permitting a person holding a license to teach cosmetology and not actively engaged either full-time or part-time in teaching cosmetology or manicuring from teaching as a substitute for an active teacher.

(3) A fee prescribed by the board shall be charged, in addition to other fees fixed by law, for renewal applications of licenses and certificates made after December 31 of each year or other predetermined renewal deadline.

History: **En. Sec. 16, Ch. 104, L. 1929; re-en. Sec. 3228.16, R.C.M. 1935; amd. Sec. 13, Ch. 222, L. 1939; amd. Sec. 1, Ch. 115, L. 1961; amd. Sec. 1, Ch. 132, L. 1967; amd. Sec. 75, Ch. 350, L. 1974; amd. Sec. 3, Ch. 305, L. 1977; R.C.M. 1947, 66-816; amd. Sec. 16, Ch. 22, L. 1979; amd. Sec. 57, Ch. 345, L. 1981; amd. Sec. 6, Ch. 260, L. 1985; amd. Sec. 11, Ch. 602, L. 1985.**

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-31-323. Fees. (1) Fees for licenses and certificates of registration shall be paid to the department in amounts prescribed by the board.

(2) The license and registration fees shall be paid annually, unless otherwise provided by board rule, in advance to the department.

(3) No other or additional license or registration fee may be imposed by a municipal corporation or other political subdivision of this state for the practice or teaching of cosmetology.

History: **En. Sec. 15, Ch. 104, L. 1929; re-en. Sec. 3228.15, R.C.M. 1935; amd. Sec. 12, Ch. 222, L. 1939; amd. Sec. 3, Ch. 80, L. 1941; amd. Sec. 3, Ch. 20, L. 1955; amd. Sec. 2, Ch. 140, L. 1959; amd. Sec. 1, Ch. 131, L. 1963; amd. Sec. 1, Ch. 324, L. 1971; amd. Sec. 74, Ch. 350, L. 1974; amd. Sec. 4, Ch. 533, L. 1977; R.C.M. 1947, 66-815; amd. Sec. 10, Ch. 106, L. 1981; amd. Sec. 58, Ch. 345, L. 1981.**

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-31-324. Deposit of fees. All fees collected by the department under this chapter shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: **En. Sec. 9, Ch. 104, L. 1929; re-en. Sec. 3228.9, R.C.M. 1935; amd. Sec. 8, Ch. 222, L. 1939; amd. Sec. 135, Ch. 147, L. 1963; amd. Sec. 1, Ch. 133, L. 1967; amd. Sec. 1, Ch. 224,**

L. 1974; amd. Sec. 70, Ch. 350, L. 1974; amd. Sec. 28, Ch. 439, L. 1975; amd. Sec. 1, Ch. 531, L. 1977; R.C.M. 1947, 66-809(part); amd. Sec. 1, Ch. 277, L. 1983.

37-31-325 through 37-31-330 reserved.

37-31-331. Refusal, revocation, or suspension of licenses — grounds — notice and hearing. (1) The board may refuse to issue, refuse to renew, or may revoke or suspend a license in any one of the following cases:

(a) failure of a person, firm, partnership, or corporation operating a cosmetological establishment, manicuring shop, school of cosmetology, or school of manicuring to comply with this chapter;

(b) failure to comply with the sanitary rules adopted by the board and approved by the department of health and environmental sciences for the regulation of cosmetological establishments, manicuring shops, schools of cosmetology, or schools of manicuring;

(c) gross malpractice;

(d) continued practice by a person knowingly having an infectious or contagious disease;

(e) habitual drunkenness or habitual addiction to the use of morphine or any habit-forming drug;

(f) permitting a certificate of registration or license to be used where the holder is not personally, actively, and continuously engaged in business; or

(g) failure to display the license.

(2) However, the board may not refuse to authorize the department to issue or renew a license or revoke or suspend a license already issued until after notice and opportunity for a hearing.

History: En. Sec. 11, Ch. 104, L. 1929; re-en. Sec. 3228.11, R.C.M. 1935; amd. Sec. 10, Ch. 222, L. 1939; amd. Sec. 71, Ch. 350, L. 1974; R.C.M. 1947, 66-811; amd. Sec. 12, Ch. 602, L. 1985.

Cross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of Director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-31-332. Suspension for contracting communicable disease. If a licensee contracts a communicable disease endangering the public health, the board shall, on proof of it, cancel or suspend his license until the licensee can secure a physician's certificate showing that he is free from a communicable disease.

History: En. Sec. 3, Ch. 104, L. 1929; amd. Sec. 1, Ch. 14, L. 1931; re-en. Sec. 3228.3, R.C.M. 1935; amd. Sec. 3, Ch. 222, L. 1939; amd. Sec. 1, Ch. 210, L. 1945; amd. Sec. 3, Ch. 244, L. 1961; amd. Sec. 1, Ch. 167, L. 1969; amd. Sec. 2, Ch. 168, L. 1971; amd. Sec. 1, Ch. 268, L. 1973; amd. Sec. 1, Ch. 310, L. 1973; amd. Sec. 65, Ch. 350, L. 1974; R.C.M. 1947, 66-803(9).

37-31-333. Appeal from actions of board. An appeal may be taken from any actions of the board to the district court of the county in which the applicant resides.

History: En. Sec. 14, Ch. 104, L. 1929; re-en. Sec. 3228.14, R.C.M. 1935; R.C.M. 1947, 66-814.

Cross-References

Judicial review of contested cases, Title 2, ch. 4, part 7.

37-31-334. Penalty — injunction. (1) The commission of any of the acts prohibited as provided in 37-31-301 or the violation of any other provision in this chapter shall be a misdemeanor punishable by a fine or imprisonment or both fine and imprisonment.

(2) Regardless of any penalties provided in this chapter and as an additional remedy, the district courts of the state of Montana are vested with jurisdiction to restrain and enjoin any violation or threatened violation of the requirements of this chapter as a nuisance per se or otherwise and the board, the attorney general, or any county attorney may institute proceedings in equity for the purpose of obtaining equitable relief against violations of the provisions of this chapter.

History: En. Sec. 17, Ch. 104, L. 1929; amd. Sec. 1, Ch. 13, L. 1931; re-en. Sec. 3228.17, R.C.M. 1935; amd. Sec. 14, Ch. 222, L. 1939; amd. Sec. 1, Ch. 140, L. 1959; R.C.M. 1947, 66-817(C), (D).

Cross-References

Duties of Attorney General, 2-15-501.

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

Nuisances, Title 27, ch. 30.

Disciplinary authority of boards — injunctions, 37-1-136.

Penalty when none specified, 46-18-212.

CHAPTER 32

ELECTROLOGY

Part 1 — General

37-32-101. Purpose.
37-32-102. Definitions.
37-32-103. Exemptions.

Part 2 — Board of Cosmetologists

37-32-201. Rulemaking power.

Part 3 — Licensing

37-32-301. License required.
37-32-302. Qualifications — examination — issuance of license.
37-32-303. Reciprocity.
37-32-304. Electrology salon or school license required.
37-32-305. Fees — renewal — deposit of moneys collected.
37-32-306. Inspection.
37-32-307 through 37-32-309 reserved.

37-32-310. Refusal, revocation, or suspension of licenses — grounds — notice and hearing.
37-32-311. Penalty.

Part 1

General

37-32-101. Purpose. The legislature finds and declares that the practice of electrology in Montana affects the public health, safety, and welfare and should therefore be subject to regulation and control in the public interest in order to protect the public from the unauthorized and unqualified practice of electrology.

History: En. 66-3601 by Sec. 1, Ch. 143, L. 1975; R.C.M. 1947, 66-3601.

37-32-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Approved school" means a school which the board has approved as having a course of instruction or education and training in electrology which meets the criteria established by the board.

(2) "Board" means the board of cosmetologists.

(3) "Department" means the department of commerce.

(4) "Electrology" means the study and professional practice of permanently removing superfluous hair by destroying the hair roots by passage of an electric current with an electrified needle. Electrology as defined in this chapter shall include electrolysis and/or thermolysis. Electrology does not include the practice of pilethermology, which is the study and professional practice of removing superfluous hair by passage of radio frequency energy with electronic tweezers and similar devices.

History: En. 66-3602 by Sec. 2, Ch. 143, L. 1975; R.C.M. 1947, 66-3602; amd. Sec. 1, Ch. 482, L. 1979; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 412, L. 1981.

37-32-103. Exemptions. Nothing in this chapter prevents a licensed medical doctor from performing the work of an electrologist.

History: En. 66-3603 by Sec. 3, Ch. 143, L. 1975; R.C.M. 1947, 66-3603(2); amd. Sec. 11, Ch. 106, L. 1981.

Part 2

Board of Cosmetologists

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1857.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-32-201. Rulemaking power. (1) The board may adopt rules in accordance with the Montana Administrative Procedure Act to implement this chapter and to properly regulate this profession.

(2) Rules adopted by the board may provide for:

(a) the conduct of board business;

(b) the qualifications, examination, and licensure of applicants to practice or teach electrology;

(c) standards and requirements for licensure of premises to be used for the practice or teaching of electrology;

(d) the curriculum and conduct of schools of electrology;

(e) sanitary standards for licensees, salons, and schools, with particular reference to the precautions necessary to prevent the creation and spread of infectious and contagious diseases; and

(f) the conduct of persons, salons, and schools licensed under this chapter.

History: En. 66-3607 by Sec. 7, Ch. 143, L. 1975; amd. Sec. 32, Ch. 101, L. 1977; R.C.M. 1947, 66-3607(1); amd. Sec. 1, Ch. 40, L. 1985.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Duties of boards, 37-1-131.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-32-301. License required. (1) No person may represent himself to be an electrologist or engage in the practice or teaching of electrology unless he is licensed under this chapter.

(2) Applications for licensure or renewal of a license must be made to the department on forms provided by the department. The application must be accompanied by the appropriate fee.

History: En. 66-3603 by Sec. 3, Ch. 143, L. 1975; R.C.M. 1947, 66-3603(1); amd. Sec. 2, Ch. 40, L. 1985.

37-32-302. Qualifications — examination — issuance of license. (1) Before a license to practice electrology is granted, the applicant shall meet all of the following requirements:

(a) be at least 18 years of age;

(b) furnish satisfactory evidence of education, instruction, training, and experience in the field of electrology as the board may fix by rule;

(c) pass an examination to the satisfaction of the board in the field of electrology if it is required by the board.

(2) The department shall issue the electrologist license only after it is granted by the board and all requirements of this chapter have been met.

History: En. 66-3604 by Sec. 4, Ch. 143, L. 1975; R.C.M. 1947, 66-3604.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

License investigation and review — record access, 37-1-135.

37-32-303. Reciprocity. Reciprocal electrology licenses may be granted by the board where the individual has a valid license from another state and has fulfilled requirements of this profession similar to those provided in this chapter.

History: En. 66-3606 by Sec. 6, Ch. 143, L. 1975; R.C.M. 1947, 66-3606.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-32-304. Electrology salon or school license required. (1) The premises in which an electrologist or electrologists may practice must be licensed in accordance with rules adopted by the board. Rules adopted by the board shall provide for equipment standards and sanitary rules so that the health of the individual patron is properly protected.

(2) The premises in which electrology is taught must be licensed in accordance with rules adopted by the board pursuant to 37-32-201.

(3) Applications for licensure or renewal under this section must be made to the department on forms provided by the department. Applications must be accompanied by the proper licensure or renewal fee and the inspection fee required by 37-32-306.

History: En. 66-3605 by Sec. 5, Ch. 143, L. 1975; R.C.M. 1947, 66-3605; amd. Sec. 3, Ch. 40, L. 1985.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-32-305. Fees — renewal — deposit of moneys collected. (1) The fee for an original electrologist license shall be set by the board. The renewal shall be automatic, unless revoked or suspended for cause, and the renewal fee shall be set by the board.

(2) The fee for an original electrologist salon license shall be the same as that for cosmetology salons. The renewal fee shall be the same as that for cosmetology salons.

(3) All licenses issued under this chapter expire on December 31 and shall be renewed annually. Failure to renew on or before December 31 shall cause a late renewal fee prescribed by the board to be added to the regular renewal fee. The right to renew by payment of the late renewal fee expires after 3 years of nonpayment.

(4) All fees or moneys collected by the department under this chapter shall be deposited in the state special revenue fund for the use of the board in administration of the chapter.

History: En. 66-3608 by Sec. 8, Ch. 143, L. 1975; amd. Sec. 11, Ch. 533, L. 1977; R.C.M. 1947, 66-3608; amd. Sec. 59, Ch. 345, L. 1981; amd. Sec. 1, Ch. 277, L. 1983.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-32-306. Inspection. (1) The department shall appoint inspectors to inspect electrology schools and salons and perform other duties as the department may direct. Inspectors may enter electrology salons and schools during business hours for the purpose of evaluating whether the premises qualify for licensure or otherwise meet standards established by the board.

(2) Upon application for issuance of a license, an electrology salon or school shall pay an inspection fee prescribed by the board.

(3) The board may authorize the department to grant an electrology salon or school, upon payment of an inspection fee, a temporary permit authorizing the electrology establishment to operate for a period of not to exceed 90 days or until an inspector is able to make the inspection, whichever event occurs first. This temporary permit is not renewable.

(4) The board may conduct periodic inspections of electrology salons and schools within this state to determine compliance with this chapter and rules adopted to implement it.

History: **En. Sec. 4, Ch. 40, L. 1985.**

37-32-307 through 37-32-309 reserved.

37-32-310. Refusal, revocation, or suspension of licenses — grounds — notice and hearing. (1) The board may deny, refuse to renew, revoke, suspend, or take other disciplinary action against a licensee in any of the following cases:

(a) failure of a person, firm, partnership, or corporation operating an electrology salon or school of electrology to comply with this chapter or rules adopted under this chapter;

(b) failure to comply with sanitary rules adopted by the board for the regulation of electrology salons or schools of electrology;

(c) gross malpractice or repeated malpractice;

(d) continued practice by a person knowingly having an infectious or contagious disease;

(e) habitual drunkenness or addiction to any habit-forming drug;

(f) permitting a license to be used when the holder is not personally, actively, and continuously engaged in business;

(g) unprofessional conduct as defined by rules of the board; or

(h) failure to display the license.

(2) Title 2, chapter 4, part 6, applies to all contested cases under this chapter.

History: **En. Sec. 5, Ch. 40, L. 1985.**

Cross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of Director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-32-311. Penalty. Violation of this chapter or of the rules adopted under it is a misdemeanor punishable by a fine, imprisonment, or by both fine and imprisonment.

History: **En. 66-3607 by Sec. 7, Ch. 143, L. 1975; amd. Sec. 32, Ch. 101, L. 1977; R.C.M. 1947, 66-3607(2).**

Cross-References

Reporting disciplinary actions against licensees, 37-1-105.

Disciplinary authority of boards — injunctions, 37-1-136.

Penalty when none specified, 46-18-212.

CHAPTER 33

MASSAGE THERAPY
(Repealed. Sec. 7, Ch. 84, L. 1983)

Chapter Compiler's Comments

Histories of Repealed Sections:

37-33-101. En. Sec. 1, Ch. 302, L. 1967; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2901.

37-33-102. En. Sec. 2, Ch. 302, L. 1967; amd. Sec. 1, Ch. 321, L. 1974; amd. Sec. 283, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2902.

37-33-103. En. Sec. 14, Ch. 302, L. 1967; amd. Sec. 8, Ch. 321, L. 1974; R.C.M. 1947, 66-2914; amd. Sec. 1, Ch. 32, L. 1979.

37-33-104. En. Sec. 8, Ch. 302, L. 1967; amd. Sec. 5, Ch. 321, L. 1974; amd. Sec. 289, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2908(part).

37-33-201. En. Sec. 4, Ch. 302, L. 1967; amd. Sec. 1, Ch. 243, L. 1973; amd. Sec. 2, Ch. 321, L. 1974; amd. Sec. 285, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2904(1), (2).

37-33-202. En. Sec. 10, Ch. 302, L. 1967; amd. Sec. 7, Ch. 321, L. 1974; amd. Sec. 291, Ch. 350, L. 1974; amd. Sec. 43, Ch. 439, L. 1975; R.C.M. 1947, 66-2910(3), (4); amd. Sec. 26, Ch. 474, L. 1981.

37-33-203. En. Sec. 11, Ch. 302, L. 1967; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2911.

37-33-204. En. Sec. 4, Ch. 302, L. 1967; amd. Sec. 1, Ch. 243, L. 1973; amd. Sec. 2, Ch. 321, L. 1974; amd. Sec. 285, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2904(3).

37-33-301. En. Sec. 5, Ch. 302, L. 1967; amd. Sec. 3, Ch. 321, L. 1974; amd. Sec. 286, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2905(1).

37-33-302. En. Sec. 6, Ch. 302, L. 1967; amd. Sec. 4, Ch. 321, L. 1974; amd. Sec. 287, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2906; amd. Sec. 60, Ch. 345, L. 1981.

37-33-303. En. Sec. 5, Ch. 302, L. 1967; amd. Sec. 3, Ch. 321, L. 1974; amd. Sec. 286, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2905(2).

37-33-304. En. Sec. 7, Ch. 302, L. 1967; amd. Sec. 288, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2907.

37-33-305. En. Sec. 12, Ch. 302, L. 1967; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2912; amd. Sec. 61, Ch. 345, L. 1981.

37-33-306. En. Sec. 9, Ch. 302, L. 1967; amd. Sec. 6, Ch. 321, L. 1974; amd. Sec. 290, Ch. 350, L. 1974; amd. Sec. 10, Ch. 533, L. 1977; R.C.M. 1947, 66-2909; amd. Sec. 2, Ch. 32, L. 1979; amd. Sec. 62, Ch. 345, L. 1981.

37-33-307. En. Sec. 10, Ch. 302, L. 1967; amd. Sec. 7, Ch. 321, L. 1974; amd. Sec. 291, Ch. 350, L. 1974; amd. Sec. 43, Ch. 439, L. 1975; R.C.M. 1947, 66-2910(1), (2).

37-33-308 through 37-33-310 reserved.

37-33-311. En. Sec. 8, Ch. 302, L. 1967; amd. Sec. 5, Ch. 321, L. 1974; amd. Sec. 289, Ch. 350, L. 1974; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2908(part).

37-33-312. En. Sec. 13, Ch. 302, L. 1967; amd. Sec. 26, Ch. 101, L. 1977; R.C.M. 1947, 66-2913.

CHAPTERS 34 THROUGH 39

RESERVED

CHAPTER 40

SANITARIANS

Part 1 — General

37-40-101. Definitions.
37-40-102. Exemptions.

Part 2 — Board of Sanitarians

37-40-201. Chairman — meetings.
37-40-202. Compensation — expenses.

37-40-203. Rulemaking power.

Part 3 — Licensing

37-40-301. License required.
37-40-302. Application — examination — certificate.
37-40-303. Licensing sanitarians from other states.
37-40-304. Fees — renewal.
37-40-305. Deposit of fees.
37-40-306. Prior registration as sanitarian still valid.
37-40-307. Sanitarian practicing prior to effective date.
37-40-308 through 37-40-310 reserved.
37-40-311. Suspension or revocation of license.
37-40-312. Penalty.

Chapter Cross-References

Publicly employed sanitarians to cooperate concerning water quality, 75-5-106.

Cooperation of sanitarians with reviewing authority, 76-4-106.

Cooperative agreements between sanitarians and Department of Livestock, 81-22-305.

Part 1

General

37-40-101. Definitions. Unless the context requires otherwise, as used in this chapter, the following definitions apply:

(1) "Board" means the board of sanitarians provided for in 2-15-1861.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Registered sanitarian" means a sanitarian licensed under this chapter.

(4) "Sanitarian", within the meaning and intent of this chapter, shall mean a person who, by reason of his special knowledge of the physical, biological, and chemical sciences and the principles and methods of public health acquired by professional education and practical experience through inspectional, educational, and/or enforcement duties, is qualified to practice the profession of sanitarian.

(5) "Practice the profession of sanitarian" means planning, inspectional, educational, or enforcement duties in the field of environmental sanitation.

History: **En. 69-3410 by Sec. 1, Ch. 314, L. 1974; R.C.M. 1947, 69-3410(1) thru (5); amd. Sec. 3, Ch. 274, L. 1981.**

37-40-102. Exemptions. Persons exempt from the requirements of this chapter, unless practicing the profession of sanitarian, are:

(1) any person teaching, lecturing, or engaging in research in environmental sanitation, but only insofar as such activities are performed as part of an academic position in a college or university;

(2) any person who is a sanitary engineer, public health engineer, registered professional engineer, or engineer-in-training;

(3) any public health officer employed pursuant to 50-2-116; and

(4) any person employed by a federal governmental agency, but only at such times as the person is carrying out the functions of his employment.

History: **En. 69-3410 by Sec. 1, Ch. 314, L. 1974; R.C.M. 1947, 69-3410(6).**

Part 2

Board of Sanitarians

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1861.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-40-201. Chairman — meetings. The board shall appoint one of its members chairman. The board shall meet at least once annually and at such other times as agreed upon. The board shall not meet more than four times a year.

History: En. 69-3414 by Sec. 5, Ch. 314, L. 1974; amd. Sec. 16, Ch. 453, L. 1977; R.C.M. 1947, 69-3414(2).

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Duty of Department to provide facilities, 37-1-101.

Disrupting meeting as disorderly conduct, 45-8-101.

37-40-202. Compensation — expenses. Members of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. 69-3414 by Sec. 5, Ch. 314, L. 1974; amd. Sec. 16, Ch. 453, L. 1977; R.C.M. 1947, 69-3414(1); amd. Sec. 27, Ch. 474, L. 1981.

37-40-203. Rulemaking power. (1) The board may adopt rules consistent with this chapter for its administration.

(2) The board's rulemaking and hearing functions shall be in accordance with the Montana Administrative Procedure Act.

History: En. 69-3418 by Sec. 9, Ch. 314, L. 1974; R.C.M. 1947, 69-3418(1), (3).

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Duties of boards, 37-1-131.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-40-301. License required. A person may not practice the profession of a sanitarian or hold himself out to be a sanitarian unless he is licensed under this chapter.

History: En. 69-3411 by Sec. 2, Ch. 314, L. 1974; R.C.M. 1947, 69-3411.

37-40-302. Application — examination — certificate. (1) A person wishing to practice the profession of sanitarian may apply to the department for registration on a form prescribed by the board.

(2) An applicant must possess a minimum of a bachelor's degree in environmental health or its equivalent from an accredited university or college and must pass an examination given at a time and place set by the board.

(3) If the applicant meets the board's standards and passes the examination prescribed by the board, the department shall issue a certificate of registration upon payment of the required fee.

(4) Holders of current certificates shall be entitled to append to their name the initials "R.S.".

History: En. 69-3415 by Sec. 6, Ch. 314, L. 1974; R.C.M. 1947, 69-3415; amd. Sec. 4, Ch. 149, L. 1981.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-40-303. Licensing sanitarians from other states. The department shall issue a license without examination to a person who applies to the department, pays a fee prescribed by the board, and submits satisfactory proof to the board that:

(1) he is of good moral character; and

(2) he is registered or licensed as a sanitarian in a state which has requirements comparable to those in this state.

History: En. 69-3419 by Sec. 10, Ch. 314, L. 1974; R.C.M. 1947, 69-3419; amd. Sec. . Ch. 149, L. 1981; amd. Sec. 63, Ch. 345, L. 1981.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-40-304. Fees — renewal. (1) An applicant for a license shall pay a fee set by the board in an amount commensurate with examination and administrative costs.

(2) A registered sanitarian may renew his license by paying an annual fee set by the board.

(3) Renewal fees are due July 1 of the renewal year. If the renewal fee is not paid, the license expires. Licenses which have lapsed for failure to pay renewal fees may be reissued under rules adopted by the board.

History: En. 69-3416 by Sec. 7, Ch. 314, L. 1974; amd. Sec. 12, Ch. 533, L. 1977; R.C.M. 1947, 69-3416; amd. Sec. 6, Ch. 149, L. 1981; amd. Sec. 64, Ch. 345, L. 1981.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-40-305. Deposit of fees. All fees collected by the department shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. 69-3417 by Sec. 8, Ch. 314, L. 1974; R.C.M. 1947, 69-3417; amd. Sec. 1, Ch. 277, L. 1983.

37-40-306. Prior registration as sanitarian still valid. All persons previously registered under Chapter 174, Laws of 1959, are registered sanitarians for purposes of this chapter.

History: En. 69-3421 by Sec. 12, Ch. 314, L. 1974; R.C.M. 1947, 69-3421.

37-40-307. Sanitarian practicing prior to effective date. A person having practiced as a sanitarian, as defined by 37-40-101(5), for 1 year prior to July 1, 1981, may be registered as a sanitarian upon making application and paying the required fee.

History: En. 69-3422 by Sec. 13, Ch. 314, L. 1974; R.C.M. 1947, 69-3422; amd. Sec. 17, Ch. 22, L. 1979; amd. Sec. 7, Ch. 149, L. 1981.

37-40-308 through 37-40-310 reserved.

37-40-311. Suspension or revocation of license. (1) The board may suspend or revoke a license for the following reasons:

(a) unprofessional conduct;

(b) fraud and deceit in obtaining a license;

(c) gross negligence, incompetency, or misconduct in the practice as a sanitarian; or

(d) the conviction of a crime involving moral turpitude.

(2) Any person may bring charges of fraud, deceit, gross negligence, incompetency, or misconduct against a registrant. The charges shall be made by affidavit, subscribed and sworn to by the person making them, and filed with the department. Charges, unless dismissed by the board as unfounded or trivial, must be heard by the board within 3 months after the date on which they were made.

(3) The board may require a registrant to take a written or oral examination, or both, in a proceeding to reprimand or to revoke, suspend, or refuse to renew a license.

(4) If, after a hearing, a majority of the board votes in favor of sustaining the charges, the board shall reprimand or suspend, refuse to renew, or revoke the certificate of registration of the professional sanitarian.

(5) The board, for reasons it considers sufficient, may reissue a certificate of registration to a person whose certificate has been revoked if a majority of the members of the board vote in favor of the reissuance. A new certificate of registration, to replace a certificate revoked, lost, destroyed, or mutilated, may be issued by the department, subject to the rules of the board.

History: En. 69-3418 by Sec. 9, Ch. 314, L. 1974; R.C.M. 1947, 69-3418(2); amd. Sec. 8, Ch. 149, L. 1981.

Cross-References

Oath defined, 1-1-201.

Power of notary to take acknowledgments, 1-5-416.

Oaths, Title 1, ch. 6.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Licensing to follow contested case procedure, 2-4-631.

Affidavits, Title 26, ch. 1, part 10.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of Director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Perjury, 45-7-201.

False swearing, 45-7-202.

37-40-312. Penalty. A person who offers his services as a sanitarian or uses, assumes, or advertises in any way any title or description tending to convey the impression that he is a sanitarian who does not hold the license specified by this chapter is guilty of a misdemeanor and is punishable by a fine not to exceed $500 or imprisonment for not longer than 6 months, or both.

History: En. 69-3420 by Sec. 11, Ch. 314, L. 1974; R.C.M. 1947, 69-3420.

CHAPTER 41

CESSPOOL, SEPTIC TANK, AND PRIVY CLEANERS

Part 1 — General

37-41-101. License required.
37-41-102. Repealed.
37-41-103. Rulemaking power of department.
37-41-104. Definitions.
37-41-105. Exclusions.

Part 2 — Licensing

37-41-201. Application for license — form and contents.
37-41-202. Licenses — nontransferability — fees.
37-41-203. Repealed.
37-41-204. Repealed.
37-41-205 through 37-41-210 reserved.
37-41-211. Denial, suspension, or revocation of license.
37-41-212. Enforcement responsibility — penalty — deposit of fines.

Part 1

General

37-41-101. License required. No person may engage in the business of cleaning cesspools, septic tanks, or privies and disposal of septage therefrom unless licensed by the department.

History: En. Sec. 193, Ch. 197, L. 1967; amd. Sec. 1, Ch. 76, L. 1971; amd. Secs. 105, 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5401(part); amd. Sec. 2, Ch. 556, L. 1983.

37-41-102. Repealed. Sec. 12, Ch. 556, L. 1983.

History: En. Sec. 199, Ch. 197, L. 1967; amd. Sec. 6, Ch. 76, L. 1971; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5407; amd. Sec. 18, Ch. 22, L. 1979.

37-41-103. Rulemaking power of department. The department shall adopt necessary rules for the implementation of the provisions of this chapter, including rules pertaining to:

(1) licensure but not operation of septic tank, cesspool, and privy cleaning businesses; and

(2) requirements for temporary and permanent sites for disposal of septage.

History: En. Sec. 198, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5406; amd. Sec. 3, Ch. 556, L. 1983.

Cross-References
Adoption and publication of rules, Title 2, ch. 4, part 3.

37-41-104. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(3) "Disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of septage into or onto the land or water.

(4) "Person" means an individual, firm, partnership, association, corporation, city, town, local government entity, or other government or private entity, whether organized for profit or not.

(5) "Septage" means waste material from cesspools, septic tanks, or privies.

History: **En. Sec. 1, Ch. 556, L. 1983.**

37-41-105. Exclusions. This chapter does not prohibit the owner or lessee of the property from which the septage was removed from disposing or contracting for the disposal of his own septage upon land owned or leased by him if it does not create a nuisance or public health hazard.

History: **En. Sec. 8, Ch. 556, L. 1983.**

Cross-References
Nuisances, Title 27, ch. 30.

Part 2

Licensing

Part Cross-References
Licensing to follow contested case procedure, 2-4-631.
Licensure of criminal offenders, Title 37, ch. 1, part 2.
Nondiscrimination in licensing, 49-3-204.

37-41-201. Application for license — form and contents. Application for a license is made to the department on application forms provided by the department. The application shall contain:

(1) the full name and business address of each applicant;

(2) a list of the counties in which business is to be conducted; and

(3) certification by a local health officer or his designated representative in each county in which the applicant's business is to be conducted that proposed disposal sites to be used by the applicant meet all applicable state and local requirements.

History: **En. Sec. 194, Ch. 197, L. 1967; amd. Sec. 2, Ch. 76, L. 1971; amd. Secs. 107, 109, Ch. 349, L. 1974; R.C.M. 1947, 69-5402; amd. Sec. 4, Ch. 556, L. 1983.**

37-41-202. Licenses — nontransferability — fees. (1) Licenses expire on December 31 of each calendar year. Licenses are not transferable. If a licensee ceases to do business, the license shall be surrendered to the department.

(2) The fee for each license is $25, payable at the time of application for license. A federal agency, city, town, or other political subdivision is not

required to pay the license fee, but such agency, including a federal agency if allowed by federal law, shall comply with all other requirements of this chapter. The department shall annually return 80% of the fees collected from a county to that county. The state portion of the fee shall be deposited in the state general fund. The county portion of the fee shall be used to defer cost of the county to enforce this chapter.

History: **En. Sec. 195, Ch. 197, L. 1967; amd. Sec. 3, Ch. 76, L. 1971; amd. Sec. 109, Ch. 349, L. 1974; R.C.M. 1947, 69-5403; amd. Sec. 5, Ch. 556, L. 1983.**

37-41-203. Repealed. Sec. 12, Ch. 556, L. 1983.

History: **En. Sec. 196, Ch. 197, L. 1967; amd. Sec. 4, Ch. 76, L. 1971; R.C.M. 1947, 69-5404.**

37-41-204. Repealed. Sec. 12, Ch. 556, L. 1983.

History: **En. Sec. 197, Ch. 197, L. 1967; amd. Sec. 5, Ch. 76, L. 1971; R.C.M. 1947, 69-5405.**

37-41-205 through 37-41-210 reserved.

37-41-211. Denial, suspension, or revocation of license. The department may deny, suspend, or revoke a license for noncompliance with this chapter or rules adopted by the department. Upon denial, suspension, or revocation, the applicant or licensee may request a hearing within 30 days after receipt of a written notice of the department's action. The hearing must be held before the board and in accordance with the Montana Administrative Procedure Act.

History: **En. Sec. 193, Ch. 197, L. 1967; amd. Sec. 1, Ch. 76, L. 1971; amd. Secs. 105, 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5401(part); amd. Sec. 6, Ch. 556, L. 1983.**

Cross-References

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-41-212. Enforcement responsibility — penalty — deposit of fines. (1) State and local health officers shall enforce this chapter.

(2) A person who violates this chapter or a rule of the department is guilty of a misdemeanor and upon conviction shall be fined not more than $500.

(3) All fines collected under this section, except those collected by a justice's court, shall be deposited in the general fund of the county in which the action is brought.

History: **En. Sec. 200, Ch. 197, L. 1967; amd. Sec. 7, Ch. 76, L. 1971; R.C.M. 1947, 69-5408; amd. Sec. 7, Ch. 556, L. 1983; amd. Sec. 27, Ch. 557, L. 1987.**

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

CHAPTER 42

WATER TREATMENT PLANT OPERATORS

Part 1 — General

37-42-101. Purpose.
37-42-102. Definitions.
37-42-103. Exemption.

37-42-104. Classification of treatment plants and distribution systems.

Part 2 — Water and Wastewater Operators' Advisory Council

37-42-201. Meetings — compensation of members — expenses.
37-42-202. Rulemaking power — examinations — continuing education requirements.
37-42-203. Duty to advise and assist department.

Part 3 — Licensing

37-42-301. Department to certify operators.
37-42-302. Unlawful to operate plant or system without certified operator — department to issue temporary certificates.
37-42-303. Operator of treatment plant or distribution system to be certified — exemption.
37-42-304. Application for operator's certificate — fee.
37-42-305. Certification without examination.
37-42-306. Issuance of operator certificate — display.
37-42-307. Retention of certificate by operators who terminate employment — notification to department.
37-42-308. Annual renewal — fees — revocation for failure to renew — reinstatement — notice of suspension.
37-42-309. Deposit of fees.
37-42-310 through 37-42-320 reserved.
37-42-321. Revocation of operator's certificate — disciplinary action by department.
37-42-322. Violation.

Chapter Cross-References

Metropolitan sanitary and/or storm sewer districts, Title 7, ch. 13, part 1.

Municipal sewage and/or water systems, Title 7, ch. 13, part 43.

Water quality, Title 75, ch. 5.

Public water supplies, distribution, and treatment, Title 75, ch. 6.

Aquatic ecosystem protections, Title 75, ch. 7.

Sanitation in subdivisions, Title 76, ch. 4, part 1.

Part 1

General

37-42-101. Purpose. It is hereby found and declared that the health and welfare of Montana citizens are jeopardized by persons not properly qualified to operate the water supply systems and that Montana's waters are endangered by persons not properly qualified to operate the wastewater treatment plants. It is declared the public policy of this state to control by certifying those persons working in these occupations in order to protect the public health and safety.

History: **En. Sec. 1, Ch. 239, L. 1967; R.C.M. 1947, 69-5901.**

37-42-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Certificate" means a certificate of competency issued by the department, stating that the operator holding the certificate has met the requirements for the specified operator classification of the certification program.

(2) "Council" means the water and wastewater operators' advisory council provided for in 2-15-2105.

(3) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(4) "Montana's waters" means all streams and lakes (including all rivers and lakes bordering on the state), wells, springs, irrigation systems, marshes, watercourses, waterways, drainage systems, and other bodies of water, surface and underground, natural or artificial, publicly or privately owned.

(5) "Operator" means the person in direct responsible charge of the operation of a water treatment plant, water distribution system, or wastewater treatment plant.

(6) "Wastewater treatment plant" means a facility designed to remove solids, bacteria, or other harmful constituents of sewage, industrial wastes, or other wastes and which discharges an effluent directly into this state's waters and which serves 10 or more families or serves an industry employing 10 or more persons.

(7) "Water distribution system" means that portion of the water supply system in which water is conveyed from the water treatment plant or other supply source to the premises of the consumer and which serves 10 or more families or supplies an industry employing 10 or more persons.

(8) "Water supply system" means the system of pipes, structures, and facilities through which the water is obtained, treated, sold, distributed, or otherwise offered to the public for household use or use by humans and which serves 10 or more families or serves an industry employing 10 or more persons.

(9) "Water treatment plant" means that portion of the water supply system which alters either the physical, chemical, or bacteriological quality of the water rendering it safe and palatable for human use.

History: En. Sec. 2, Ch. 239, L. 1967; amd. Sec. 85, Ch. 349, L. 1974; R.C.M. 1947, 69-5902(part); amd. Sec. 4, Ch. 243, L. 1983.

37-42-103. Exemption. Operators of plants or systems serving less than 10 families are exempt from this chapter.

History: En. Sec. 2, Ch. 239, L. 1967; amd. Sec. 85, Ch. 349, L. 1974; R.C.M. 1947, 69-5902(part).

37-42-104. Classification of treatment plants and distribution systems. The department shall classify all water treatment plants, water distribution systems, and wastewater treatment plants with due regard to the size, type, physical conditions affecting such water treatment plants and distribution systems, character of wastewaters to be treated and other physical conditions affecting such waste treatment plants, and according to the skill, knowledge, and experience that the operator in responsible charge must have to successfully supervise the operation of such water treatment plants and water distribution systems and such wastewater treatment facilities so as to protect the public health and prevent unlawful pollution.

History: En. Sec. 4, Ch. 239, L. 1967; amd. Sec. 111, Ch. 349, L. 1974; R.C.M. 1947, 69-5904.

Part 2

Water and Wastewater Operators' Advisory Council

37-42-201. Meetings — compensation of members — expenses. (1) Annually, when new members are appointed to the council, a chairman shall be elected at the next council meeting.

(2) Meetings may be called by the chairman or on written request of four members of the council when necessary to carry out its function to advise the department under this chapter. Four members constitute a quorum.

(3) Members of the council are entitled to be reimbursed and compensated as are members of advisory councils in 2-15-122(5).

History: En. Sec. 3, Ch. 239, L. 1967; amd. Sec. 1, Ch. 306, L. 1971; amd. Sec. 86, Ch. 349, L. 1974; amd. Sec. 46, Ch. 439, L. 1975; R.C.M. 1947, 69-5903(2), (3); amd. Sec. 5, Ch. 243, L. 1983.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Disrupting meeting as disorderly conduct, 45-8-101.

37-42-202. Rulemaking power — examinations — continuing education requirements. (1) The department shall adopt rules necessary to carry out this chapter. The rules shall include but are not limited to provisions establishing the basis for classification of treatment plants under 37-42-104, provisions establishing qualifications of applicants, procedures for examination of candidates, and other provisions necessary for the administration of this chapter.

(2) The department shall hold at least one examination each year, at a time and place designated by the department, for the purpose of examining candidates for certification.

(3) The department may establish reasonable continuing education requirements for certified water and wastewater operators.

History: En. Sec. 10, Ch. 239, L. 1967; amd. Sec. 3, Ch. 306, L. 1971; amd. Sec. 91, Ch. 349, L. 1974; R.C.M. 1947, 69-5910; amd. Sec. 6, Ch. 243, L. 1983.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-42-203. Duty to advise and assist department. The council shall advise and assist the department in the administration of the certification program. The council shall serve as an advisory board to the department in actions relating to the qualifications of water and wastewater treatment plant operators.

History: En. Sec. 3, Ch. 239, L. 1967; amd. Sec. 1, Ch. 306, L. 1971; amd. Sec. 86, Ch. 349, L. 1974; amd. Sec. 46, Ch. 439, L. 1975; R.C.M. 1947, 69-5903(1); amd. Sec. 7, Ch. 243, L. 1983.

Cross-References

Public water supplies — actions to enforce compliance, 75-6-111.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-42-301. Department to certify operators. (1) The department shall certify persons as to their qualifications to supervise successfully the operation of such water and wastewater treatment plants and water distribution systems.

(2) In granting the certificates, the department shall give due regard to the interest of this state in protecting the drinking water supplies and the quality of its water.

History: (1)En. Sec. 5, Ch. 239, L. 1967; amd. Sec. 111, Ch. 349, L. 1974; Sec. 69-5905, R.C.M. 1947; (2)En. Sec. 8, Ch. 239, L. 1967; amd. Sec. 2, Ch. 306, L. 1971; amd. Sec. 89, Ch. 349, L. 1974; Sec. 69-5908, R.C.M. 1947; R.C.M. 1947, 69-5905, 69-5908(part); amd. Sec. 8, Ch. 243, L. 1983.

37-42-302. Unlawful to operate plant or system without certified operator — department to issue temporary certificates. (1) It is unlawful for a person, firm, or corporation, both municipal and private, operating a wastewater treatment plant, water treatment plant, or water distribution system to operate it unless the competency of the operator is certified to by the department under this chapter.

(2) Furthermore, it is unlawful for a person to perform the duties of an operator without being certified under this chapter.

(3) For good cause shown, the department may issue temporary certificates that are valid for up to 1 year.

History: En. Sec. 11, Ch. 239, L. 1967; amd. Sec. 92, Ch. 349, L. 1974; R.C.M. 1947, 69-5911; amd. Sec. 9, Ch. 243, L. 1983.

37-42-303. Operator of treatment plant or distribution system to be certified — exemption. (1) Water and wastewater treatment plants and water distribution systems, whether publicly or privately owned, must be under the supervision of an operator whose competency is certified to by the department in a grade corresponding to the classification of that portion of the water or wastewater supply system to be supervised.

(2) However, this chapter does not prevent a governmental agency, corporation, or individual from continuing to employ in this capacity a person in responsible charge of the operation of such works on July 1, 1967. Certificates of proper classification may be issued without examination to the person or persons certified by the governing board or owner to have been in responsible charge of the water and wastewater plants and water distribution systems on July 1, 1967. A certificate so issued will be valid only in that plant.

History: En. Sec. 6, Ch. 239, L. 1967; amd. Sec. 87, Ch. 349, L. 1974; R.C.M. 1947, 69-5906(part).

37-42-304. Application for operator's certificate — fee. A person desiring to engage in the operation of a water treatment plant, water distribution system, or wastewater treatment plant shall first file an application with the department for a proper certificate. The department shall charge a fee of the same amount as the license cost as established pursuant to 37-1-134 and shall not act on an application until the fee has been paid.

History: En. Sec. 8, Ch. 239, L. 1967; amd. Sec. 2, Ch. 306, L. 1971; amd. Sec. 89, Ch. 349, L. 1974; R.C.M. 1947, 69-5908(part); amd. Sec. 10, Ch. 243, L. 1983.

37-42-305. Certification without examination. The department may consider for certification the holder of a certificate issued by a governmental agency or equivalent certification board of another state on presentation to the department of satisfactory evidence that the applicant is in responsible charge of works located in this state requiring a certified operator and that he has successfully passed an examination at least equivalent to that required under 37-42-202(2).

History: En. Sec. 6, Ch. 239, L. 1967; amd. Sec. 87, Ch. 349, L. 1974; R.C.M. 1947, 69-5906(part); amd. Sec. 11, Ch. 243, L. 1983; amd. Sec. 92, Ch. 370, L. 1987.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-42-306. Issuance of operator certificate — display. (1) The department shall issue certificates attesting to the competency of operators. The certificates shall include the classification of the works which the operator is qualified to supervise.

(2) The certificate shall be prominently displayed in the office of the operator.

(3) Certificates continue in effect unless revoked by the department but remain the property of the department, and the certificate shall so state. A certificate shall be renewed annually by payment of the proper fee.

History: En. Sec. 7, Ch. 239, L. 1967; amd. Sec. 88, Ch. 349, L. 1974; R.C.M. 1947, 69-5907(part).

37-42-307. Retention of certificate by operators who terminate employment — notification to department. (1) Operators who terminate employment may retain their certificate for 2 years, provided that all other requirements are met. After 2 years, a certificate is automatically invalidated. Operators whose certificates are invalidated under this chapter may be issued new certificates of like classification, provided appropriate proof of competency is presented to the department. Successful completion of an examination may be required at the discretion of the department.

(2) Any person, firm, or corporation, both municipal and private, shall notify the department within 3 business days after termination if a certified water or wastewater operator terminates employment.

History: En. Sec. 7, Ch. 239, L. 1967; amd. Sec. 88, Ch. 349, L. 1974; R.C.M. 1947, 69-5907(3); amd. Sec. 12, Ch. 243, L. 1983.

37-42-308. Annual renewal — fees — revocation for failure to renew — reinstatement — notice of suspension. (1) Certificates issued under this chapter shall be renewed annually before July 1. A certificate issued after July 1 expires the following June 30. After the payment of the initial fee under 37-42-304, a certificate holder shall pay before July 1 of each certificate year a renewal fee according to the schedule adopted by the department pursuant to 37-1-134.

(2) If a certificate holder does not apply for a renewal of his certificate before July 1 and remit to the department the necessary renewal fee, he shall have his certificate suspended by the department. If the certificate remains suspended for a period of more than 30 days, it shall be revoked by the department. However, the department, before this revocation, shall notify the certificate holder by certified mail at the address on the issued certificate of its intention to revoke, at least 10 days before the time set for action to be taken by the department on the certificate.

(3) A certificate once revoked may not be reinstated unless it appears that an injustice has occurred through error or omission or other fact or circumstances indicating to the department that the certificate holder was not guilty of negligence or laches.

(4) Notice of suspension shall be given to the certificate holder when the suspension occurs and to the proper official or owner of the treatment works or distribution system.

(5) If a person whose certificate has been revoked through his own fault desires to continue as a water or wastewater plant operator, he must make application to the department under 37-42-304. Successful completion of an examination may be required at the discretion of the department.

History: En. Sec. 9, Ch. 239, L. 1967; amd. Sec. 90, Ch. 349, L. 1974; R.C.M. 1947, 69-5909; amd. Sec. 13, Ch. 243, L. 1983.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

37-42-309. Deposit of fees. Filing and certification fees shall be deposited with the state treasurer in the department state special revenue fund and shall be used to pay the expenses of the council and department under this chapter. Moneys may be invested in accordance with procedures of investment of state moneys.

History: En. Sec. 8, Ch. 239, L. 1967; amd. Sec. 2, Ch. 306, L. 1971; amd. Sec. 89, Ch. 349, L. 1974; R.C.M. 1947, 69-5908(part); amd. Sec. 14, Ch. 243, L. 1983; amd. Sec. 1, Ch. 277, L. 1983.

37-42-310 through 37-42-320 reserved.

37-42-321. Revocation of operator's certificate — disciplinary action by department. (1) The department may revoke the certificate of an operator, following a hearing by the department, when it is found that:

(a) the operator has practiced fraud or deception;

(b) reasonable care, judgment, or the application of his knowledge or ability was not used in the performance of his duties; or

(c) the operator is incompetent or unable to properly perform his duties.

(2) The department may take any disciplinary action pursuant to 37-1-136.

History: En. Sec. 7, Ch. 239, L. 1967; amd. Sec. 88, Ch. 349, L. 1974; R.C.M. 1947, 69-5907(2); amd. Sec. 15, Ch. 243, L. 1983.

Cross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-42-322. Violation. Any person, firm, or corporation, both municipal and private, violating any provisions of this chapter or the rules adopted hereunder is guilty of a misdemeanor. Each day of operation in violation of this chapter or any rules adopted hereunder shall constitute a separate offense.

History: En. Sec. 12, Ch. 239, L. 1967; R.C.M. 1947, 69-5912.

Cross-References

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

Penalty when none specified, 46-18-212.

CHAPTER 43

WATER WELL CONTRACTORS

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37-43-312. Penalty.

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37-43-401. No action or counterclaim to be maintained except by licensee.
37-43-402. Completion of contracts by successor in interest of licensee.

Chapter Cross-References
Ground water, Title 85, ch. 2, part 5.

Part 1

General

37-43-101. Purpose. It is the purpose of this chapter to reduce and minimize the waste and contamination of groundwater resources within this state by reasonable regulation and licensing of drillers or makers of water wells and monitoring wells and to protect the health and general welfare by providing a means for the development of the natural resource of underground water in an orderly, sanitary, and reasonable manner. The reasonable regulation and licensing of drillers or makers of water wells and monitoring wells is in the best interest of the public, and the waste and contamination of groundwater resources through inefficient or incompetent operations of drillers or makers of water wells and monitoring wells is prohibited. For the protection of the public and for the conservation of underground water resources, it is necessary that standards be set and maintained to insure that competency in the drilling and making of water wells and monitoring wells in this state is obtained.

History: **En. Sec. 2, Ch. 176, L. 1961; amd. Sec. 2, Ch. 234, L. 1963; amd. Sec. 2, Ch. 232, L. 1974; amd. Sec. 250, Ch. 350, L. 1974; R.C.M. 1947, 66-2602; amd. Sec. 1, Ch. 538, L. 1987.**

37-43-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Apprentice water well driller" means an individual who is learning the trade of water well drilling and performs labor and services for a licensed water well contractor and whose duties are directly related to well drilling or drilling rig operation.

(2) "Board" means the board of water well contractors provided for in 2-15-3307.

(3) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(4) "Geotechnical boring" means a hole intended solely to determine the composition, stability, density, movement, pressure, stratigraphy, or other physical properties of soil or rock.

(5) "Monitoring well" means a well that is used for pollutant recovery or monitoring groundwater quality, groundwater levels, or flow direction, but whose primary purpose is not the withdrawal or acquisition of groundwater. Monitoring well does not include geotechnical borings, perk test holes, and groundwater exploration holes that are used to determine suitability of onsite sewage disposal by septic tank drain fields or lagoons.

(6) "Monitoring well constructor" means a natural person who installs monitoring wells.

(7) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of groundwater. The term does not include spring development or excavations, by backhoe or otherwise, for recovery and use of surface waters or for the purpose of stock watering or irrigation where the depth is 25 feet or less. The term does not include an excavation made for the purpose of obtaining or prospecting for oil, natural gas, minerals, or products of mining or quarrying or for inserting media to repressure oil- or natural-gas-bearing formations or for storing petroleum, natural gas, or other products.

(8) "Water well contractor" or "contractor" means a natural person who contracts on behalf of a firm, corporation, partnership, or other business entity to construct, alter, or rehabilitate a water well on lands other than his own for compensation.

(9) "Water well driller" or "driller" means any person, other than an apprentice, at a drilling site causing a water well to be drilled, altered, or rehabilitated.

History: **En. 66-2602.1 by Sec. 251, Ch. 350, L. 1974; amd. Sec. 2, Ch. 232, L. 1974; amd. Sec. 1, Ch. 268, L. 1975; R.C.M. 1947, 66-2602.1(part); amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 728, L. 1985; amd. Sec. 2, Ch. 538, L. 1987; amd. Sec. 1, Ch. 516, L. 1989.**

Compiler's Comments

1989 Amendment: Inserted definition of geotechnical boring; substituted definition of monitoring well for former definition that read: ""Monitoring well" means a well that is used for monitoring groundwater quality or flow direction but is not used for withdrawing groundwater for purposes other than water quality sampling or pump testing"; and in definition of monitoring well constructor substituted "installs" for "drills or supervises the drilling of". Amendment effective April 12, 1989.

Applicability: Section 10, Ch. 516, L. 1989, provided: "[This act] applies only to monitoring wells drilled on or after [the effective date of this act]." Effective April 12, 1989.

37-43-103. Repealed. Sec. 10, Ch. 728, L. 1985.

History: En. 66-2602.2 by Sec. 252, Ch. 350, L. 1974; amd. Sec. 2, Ch. 232, L. 1974; R.C.M. 1947, 66-2602.2.

37-43-104. Licensed monitoring well constructor to supervise all construction of monitoring wells. (1) Any firm, corporation, or partnership may engage in the business of constructing or installing monitoring wells provided a licensed monitoring well constructor is in charge of all monitoring well installation.

(2) The licensed monitoring well constructor must be physically present at the site throughout the construction of the monitoring well.

History: En. Sec. 17, Ch. 538, L. 1987.

Compiler's Comments

Initial Licensing as Monitoring Well Constructor: Section 2, Ch. 516, L. 1989, provided: "(1) An applicant who submits an application for a monitoring well constructor's license before December 31, 1989, shall receive a license if the applicant:

(a) provides verification of 1 or more years' experience in installing monitoring wells within the 4 years preceding the application;

(b) pays a fee prescribed by the board of water well contractors in 37-43-303; and

(c) provides a bond in compliance with 37-43-306.

(2) A licensed water well contractor is not required to obtain a separate license to install monitoring wells, but shall meet the requirements of subsections (1)(b) and (1)(c) before being authorized to proceed with monitoring well installation." Section 16, Ch. 538, L. 1987, which provided for initial licensure through June 1, 1988, was repealed by sec. 8, Ch. 516, L. 1989, effective April 12, 1989.

Part 2

Board of Water Well Contractors

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-3307.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-43-201. Organization — seal — compensation of members. (1) The board shall annually elect a chairman and vice-chairman.

(2) The board shall have a seal with the words engraved thereon, "Board of Water Well Contractors", and such seal shall be affixed to all writs, authentication of records, and other official proceedings of the board. The courts of this state shall take judicial notice of such seal.

(3) Each appointed member of the board who is not a government employee shall receive as compensation for his services the sum of $50 per day for each day actually engaged in the performance of the duties of his office, including time of travel between his home and the places at which he shall perform such duties, together with mileage and per diem expenses as provided for in 2-18-501 through 2-18-503. The members who are employees of the state of Montana shall receive no extra compensation for their services as members of the board.

History: Ap. p. 82A-1602.26 by Sec. 3, Ch. 232, L. 1974; Sec. 361, Ch. 350, L. 1974; Sec. 82A-1602.26, R.C.M. 1947; Ap. p. Sec. 4, Ch. 176, L. 1961; amd. Sec. 152, Ch. 147, L. 1963;

amd. Sec. 1, Ch. 278, L. 1969; amd. Sec. 25, Ch. 100, L. 1973; amd. Sec. 253, Ch. 350, L. 1974; amd. Sec. 41, Ch. 439, L. 1975; Sec. 66-2604, R.C.M. 1947; R.C.M. 1947, 66-2604, 82A-1602.26(4), (5); amd. Sec. 4, Ch. 83, L. 1981; amd. Sec. 3, Ch. 538, L. 1987.

Cross-References

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

37-43-202. Powers and duties. (1) The board may exercise the authority granted to it by this chapter.

(2) The board shall adopt rules and orders to effectuate this chapter.

(3) The board shall adopt rules to establish mandatory water well construction standards and enforcement procedures. The standards must address the protection of the drilling site; specifications for casing materials; materials and specifications for well screens; casing perforations; well development procedures; proper sealing and grouting; temporary capping; cleaning and disinfecting; bonds; guaranties; contractors' and drillers' qualifications; tests for yield and drawdown; reporting procedures and requirements for water quality, well logs, location of wells, and information relating to local conditions; well filters; access ports; gravel packing; sampling methods; plumbness and alignment of the hole and casing; well abandonment procedures; and other necessary and appropriate standards.

(4) The board shall adopt minimum standards regarding the construction, use, and abandonment of monitoring wells. The standards must be designed to protect the state's ground water resource from degradation by contamination and loss of hydrostatic pressure. A violation of the standards does not occur if it can be shown that noncompliance results in equal or greater protection of the ground water resource.

(5) The board may request the department to inspect water wells or monitoring wells drilled or being drilled, and the department has access to these wells at reasonable times.

(6) The board may establish a program for training apprentices and licensed or prospective water well contractors, water well drillers, and monitoring well constructors to more effectively carry out this chapter.

(7) The board shall set and enforce standards and rules governing the licensing, registration, and conduct of water well drillers, water well contractors, and monitoring well constructors.

(8) The board shall set fees commensurate with costs. The board may establish fees, including but not limited to fees for application, examination, renewal, reciprocity, late renewal, and continuing education. Board costs not related to specific programs may be equitably distributed as determined by the board. The board shall maintain records sufficient to support the fees charged for each program area.

(9) The rules of the board must be compiled in printed form for distribution to interested persons, for which the department may charge a fee. Sums realized from these sales must be deposited in the state special revenue fund for the use of the board.

(10) The board shall:

(a) authorize the department to issue licenses to qualified water well contractors, water well drillers, and monitoring well constructors in this state;

(b) cause examinations to be made of applicants for licenses;

(c) deny, revoke, or suspend licenses for good cause, after notice and opportunity to be heard;

(d) reinstate licenses previously revoked when justification is shown to the satisfaction of the board; and

(e) generally perform duties which will carry out this chapter.

(11) The board shall pay to the department its share of the assessed costs of the department in administering this chapter.

History: En. Sec. 5, Ch. 176, L. 1961; amd. Sec. 153, Ch. 147, L. 1963; amd. Sec. 3, Ch. 234, L. 1963; amd. Sec. 254, Ch. 350, L. 1974; R.C.M. 1947, 66-2605; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 728, L. 1985; amd. Sec. 4, Ch. 538, L. 1987; amd. Sec. 3, Ch. 516, L. 1989.

Compiler's Comments

1989 Amendment: Near beginning of first sentence of (4) substituted "minimum standards" for "rules" and at end, after "wells", deleted "by January 1, 1989" and inserted second and third sentences of (4) regarding standards; in (5), after "water wells", inserted "or monitoring wells"; and made minor changes in phraseology. Amendment effective April 12, 1989.

Applicability: Section 10, Ch. 516, L. 1989, provided: "[This act] applies only to monitoring wells drilled on or after [the effective date of this act]." Effective April 12, 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Allocation for administrative purposes only, 2-15-121.

Quasi-judicial boards, 2-15-124.

Duties of boards, 37-1-131.

37-43-203. Disciplinary authority — injunctions. (1) The board may adopt rules specifying grounds for disciplinary action and rules providing for:

(a) revocation of a license;

(b) suspension of its judgment of revocation on terms and conditions determined by the board;

(c) suspension of the right to practice for a period not exceeding 1 year;

(d) placing a licensee on probation;

(e) reprimand or censure of a licensee; or

(f) taking any other action in relation to disciplining a licensee as the board in its discretion considers proper.

(2) Any disciplinary action by the board must be conducted as a contested case hearing under the provisions of the Montana Administrative Procedure Act.

(3) The board may maintain an action to enjoin a person from engaging in the drilling, making, or construction of water wells or monitoring wells until a license to practice is procured. A person who has been enjoined and who violates the injunction is punishable for contempt of court.

History: En. Sec. 3, Ch. 728, L. 1985; amd. Sec. 5, Ch. 538, L. 1987.

Cross-References

Contested cases, Title 2, ch. 4, part 6.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-43-301. Licensed person to supervise all construction. (1) Any firm, corporation, or partnership may engage in the business of constructing water wells provided a licensed water well contractor is placed in charge of all water well construction.

(2) The licensed water well contractor must be the individual who contracts on behalf of the firm, corporation, or partnership.

(3) A licensed water well driller, pursuant to 37-43-305, must be employed by a licensed water well contractor.

History: En. 66-2602.1 by Sec. 251, Ch. 350, L. 1974; amd. Sec. 2, Ch. 232, L. 1974; amd. Sec. 1, Ch. 268, L. 1975; R.C.M. 1947, 66-2602.1(part); amd. Sec. 6, Ch. 538, L. 1987.

37-43-302. License required. (1) The drilling, making, or construction of water wells and monitoring wells is declared to be a business and activity affecting the public interest, requiring reasonable standards of competence. Except as provided in subsection (2), it is unlawful for any water well contractor, water well driller, or monitoring well constructor as defined in this chapter, to construct, alter, or rehabilitate a water well or a monitoring well without first having obtained a valid license therefor as provided for in this chapter. An individual who is licensed as a water well contractor is not required to have a separate water well driller's license to perform the actual construction work on the well or a separate license to install monitoring wells.

(2) A license is not required for:

(a) a person who drills, alters, or rehabilitates a water or monitoring well on land that is owned or leased by him, provided:

(i) the land is used by him for farming, ranching, or agricultural purposes or as his residence;

(ii) the person obtains a permit from the board; and

(iii) the construction of the well conforms to the minimum construction standards for water or monitoring wells set by board rule; or

(b) an apprentice water well driller who performs labor or services for a licensed water well contractor or driller in connection with the drilling of a water well at the direction and under the personal supervision of a licensed water well contractor or driller.

(3) (a) To obtain a permit under subsection (2)(a), a person shall file with the department an application containing the applicant's name, mailing address, the location of the proposed well, the nature of the applicant's ownership interest in the property on which the well is to be located, the construction or installation method to be used, and the use for the proposed well.

(b) The board shall promptly issue a permit if it finds that:

(i) the well is located on land that the applicant owns or leases and that he uses for farming, ranching, or agricultural purposes or as his residence; and

(ii) the construction or installation method to be used meets the minimum standards for water wells or monitoring wells set by board rule.

History: En. Sec. 3, Ch. 176, L. 1961; R.C.M. 1947, 66-2603; amd. Sec. 19, Ch. 22, L. 1979; amd. Sec. 4, Ch. 728, L. 1985; amd. Sec. 7, Ch. 538, L. 1987; amd. Sec. 4, Ch. 516, L. 1989.

Compiler's Comments

1989 Amendment: At end of (1) inserted "or a separate license to install monitoring wells"; and near end of (3)(b)(ii) inserted "on monitoring wells". Amendment effective April 12, 1989.

Applicability: Section 10, Ch. 516, L. 1989, provided: "[This act] applies only to monitoring wells drilled on or after [the effective date of this act]." Effective April 12, 1989.

Cross-References

Application for permit, 85-2-302.

Exceptions to permit requirements — ground water, 85-2-306.

Controlled ground water areas — permits, 85-2-508.

37-43-303. Application — fee. (1) Except as provided in 37-43-302(2), a person desiring to engage in the drilling, making, construction, alteration, or rehabilitation of one or more water or monitoring wells for underground water in this state shall first file an application with the department for a license. The application must set forth the applicant's qualifications, the equipment proposed to be used in the contracting, and other matters required by the board on forms adopted by the board.

(2) The department shall charge a fee prescribed by the board for filing an application. The application shall not be acted on until the fee has been paid. Fees collected under this section shall be deposited in the state special revenue fund for the use of the board.

(3) An appropriate license shall be issued to an applicant if, in the opinion of the board, the applicant is qualified to conduct water well or monitoring well construction operations. In the granting of licenses, the board shall have due regard for the interest of this state in the protection of its underground waters.

History: En. Sec. 6, Ch. 176, L. 1961; amd. Sec. 154, Ch. 147, L. 1963; amd. Sec. 4, Ch. 234, L. 1963; amd. Sec. 255, Ch. 350, L. 1974; R.C.M. 1947, 66-2606(1); amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 3, Ch. 642, L. 1983; amd. Sec. 5, Ch. 728, L. 1985; amd. Sec. 8, Ch. 538, L. 1987.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

Licensing investigation and review — record access, 37-1-135.

37-43-304. Repealed. Sec. 18, Ch. 538, L. 1987.

History: En. Sec. 6, Ch. 176, L. 1961; amd. Sec. 154, Ch. 147, L. 1963; amd. Sec. 4, Ch. 234, L. 1963; amd. Sec. 255, Ch. 350, L. 1974; R.C.M. 1947, 66-2606(2); amd. Sec. 6, Ch. 728, L. 1985.

37-43-305. Examination and qualifications. (1) Under board rules pertaining to the business of drilling and contracting for drilling of water wells and monitoring wells, the department shall inquire by examination or otherwise into the qualifications of applicants for licenses. Examinations may be oral, written, or both.

(2) The qualifications for a water well contractor's license are:

(a) familiar knowledge of groundwater laws of this state and sanitary standards for water well drilling and construction of water wells;

(b) knowledge of types of water well construction;

(c) knowledge of types of drilling tools and their uses;

(d) knowledge of geology in its relation to well construction;

(e) possession of adequate equipment by the applicant to complete satisfactory water wells under the standards of the board;

(f) financial responsibility of the applicant;

(g) successful completion of an examination given by the department; and

(h) completion of an apprenticeship of 1 year or more under the direct supervision of a licensed water well contractor or equivalent education, experience, or both, as determined by the board.

(3) The qualifications for a water well driller's license are:

(a) familiar knowledge of groundwater laws of this state and sanitary standards for water well drilling and water well construction;

(b) knowledge of types of water well construction;

(c) knowledge of types of drilling tools and their uses;

(d) knowledge of geology in its relation to well construction;

(e) employment by a licensed water well contractor;

(f) completion of an apprenticeship of 1 year or more under the direct supervision of a licensed water well contractor or driller or equivalent education, experience or both, as determined by the board; and

(g) successful completion of an examination given by the department.

(4) The qualifications for a license to construct monitoring wells are:

(a) familiar knowledge of groundwater laws of this state and sanitary standards for drilling and construction of monitoring wells;

(b) knowledge of types of monitoring well construction;

(c) knowledge of types of drilling tools used for monitoring wells and their uses;

(d) knowledge of geology;

(e) financial responsibility of the applicant;

(f) 1 or more years of experience in drilling monitoring wells under the direct supervision of a licensed monitoring well constructor or equivalent education, experience, or both, as determined by the board; and

(g) successful completion of an examination related specifically to drilling of monitoring wells given by the department.

(5) The department shall give examinations at times and places the board determines. Failure of an applicant to successfully complete the examination disqualifies him from making further application for a period of 3 months. The board shall act within a reasonable time on applications for licenses. An application shall be accompanied by the initial fee, and failure to successfully meet the requirements of the board does not entitle the applicant to a refund of the fee.

History: **En. Sec. 8, Ch. 176, L. 1961; amd. Sec. 4, Ch. 232, L. 1974; amd. Sec. 257, Ch. 350, L. 1974; R.C.M. 1947, 66-2608; amd. Sec. 4, Ch. 642, L. 1983; amd. Sec. 7, Ch. 728, L. 1985; amd. Sec. 9, Ch. 538, L. 1987; amd. Sec. 5, Ch. 516, L. 1989.**

Compiler's Comments

1989 Amendment: At end of (2)(h), (3)(f), and (4)(f) inserted "or equivalent education, experience, or both, as determined by the board". Amendment effective April 12, 1989.

Applicability: Section 10, Ch. 516, L. 1989, provided: "[This act] applies only to monitoring wells drilled on or after [the effective date of this act]." Effective April 12, 1989.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-43-306. Bond to be required. (1) The department, on issuance of a water well contractor's or monitoring well constructor's license under this chapter, shall require, before the person commences operations in this state, a good and sufficient surety bond or its equivalent in a certificate of deposit, cashier's check, bank draft, or certified check, to be approved by the board, in the sum of $4,000, conditioned that the licensee will comply with the rules of the board.

(2) A person who is licensed in more than one category need supply only one surety bond or its equivalent in a certificate of deposit, cashier's check, bank draft, or certified check, to be approved by the board, for $4,000.

(3) A state or federal employee who is bonded by the state or federal government is not required to supply a bond during the course of his employment with the state or federal government. A bond is required if the person ceases government employment.

(4) In lieu of the requirements of subsections (1) through (3), a firm, corporation, or partnership having more than two licensed water well contractors or monitoring well constructors may submit one bond in the amount of $10,000 for the entire firm, corporation, or partnership."

History: En. Sec. 9, Ch. 176, L. 1961; amd. Sec. 5, Ch. 232, L. 1974; amd. Sec. 258, Ch. 350, L. 1974; amd. Sec. 2, Ch. 268, L. 1975; R.C.M. 1947, 66-2609; amd. Sec. 5, Ch. 642, L. 1983; amd. Sec. 8, Ch. 728, L. 1985; amd. Sec. 10, Ch. 538, L. 1987; amd. Sec. 6, Ch. 516, L. 1989.

Compiler's Comments

1989 Amendment: Inserted (3) regarding bonded federal or state employees; and inserted (4) regarding submission of one bond for an entire firm, corporation, or partnership. Amendment effective April 12, 1989.

Applicability: Section 10, Ch. 516, L. 1989, provided: "[This act] applies only to monitoring wells drilled on or after [the effective date of this act]." Effective April 12, 1989.

37-43-307. Annual renewal — fee — revocation for nonrenewal. (1) The term for licenses issued under this chapter is from July 1 of each year through the following June 30. After the payment of the initial fee under 37-43-303, a licensee shall pay, before the first day of each license year, a renewal fee as prescribed by the board.

(2) If a licensee does not apply for renewal of his license before the first day of a license year and remit to the department the renewal fee, he shall have his license suspended by the board. If the license remains suspended for a period of more than 30 days after the first day of a license year, it shall be revoked by the board. However, the department, prior to this revocation, shall notify the licensee of the board's intention to revoke at least 10 days prior to the time set for action to be taken by the board on the license, by mailing notice to the licensee at the address appearing for the licensee in the records and files of the department. A license once revoked may not be reinstated unless it appears that an injustice has occurred indicating to the board that the licensee was not guilty of negligence or laches. If a person whose license has been revoked through his own fault desires to engage in the business of water well drilling or monitoring well construction in this state or contracting therefor, he must apply under 37-43-303. Notice of suspension shall be given a licensee when the suspension occurs.

History: En. Sec. 7, Ch. 176, L. 1961; amd. Sec. 256, Ch. 350, L. 1974; R.C.M. 1947, 66-2607; amd. Sec. 6, Ch. 642, L. 1983; amd. Sec. 11, Ch. 538, L. 1987.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-43-308. Reciprocity. If a person holding a license entitling him to drill water wells or monitoring wells in another state applies for a Montana water well contractor's, water well driller's, or monitoring well constructor's license, the board may waive the apprenticeship requirements and examination requirements if it finds that the standards and requirements of the state in which the applicant is licensed are equal to or exceed those of Montana. However, the board may require the applicant to successfully complete an examination based on Montana statutes and rules relating to the drilling of water wells or monitoring wells in this state.

History: En. Sec. 8, Ch. 642, L. 1983; amd. Sec. 12, Ch. 538, L. 1987; amd. Sec. 7, Ch. 516, L. 1989.

Compiler's Comments

1989 Amendment: In first sentence, after "water wells", inserted "or monitoring wells" and after "well driller's" inserted "or monitoring well constructor's"; in second sentence, after "water wells", inserted "or monitoring wells"; and made minor change in phraseology. Amendment effective April 12, 1989.

Applicability: Section 10, Ch. 516, L. 1989, provided: "[This act] applies only to monitoring wells drilled on or after [the effective date of this act]." Effective April 12, 1989.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-43-309 and 37-43-310 reserved.

37-43-311. Suspension and revocation of license — grounds — procedure. (1) A license issued under this chapter may be suspended or revoked by the board in cases other than failure of a licensee to renew the license after notice and hearing:

(a) in the event the licensee has violated a condition of the bond maintained by him as a prerequisite to issuance of the license;

(b) for the practice of fraud or deceit in obtaining a license;

(c) for gross negligence;

(d) for incompetence;

(e) for conviction of a felony; or

(f) for violating the requirements of this chapter.

(2) Any person may make complaint against a licensee. Complaints shall be in writing, signed by the complainant, and must specify the charges against the licensee. The board on its own motion or on receipt of a complaint shall hold a hearing on charges.

(3) A person bringing the complaint has the burden of proof and may, at the discretion of the board, be required to appear in person. A unanimous vote of the board is required in order to revoke or suspend a license. If a suspension is directed by the board, it may not be for a period in excess of 1 year.

History: En. Sec. 10, Ch. 176, L. 1961; amd. Sec. 259, Ch. 350, L. 1974; R.C.M. 1947, 66-2610; amd. Sec. 7, Ch. 642, L. 1983.

Cross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-43-312. Penalty. Any person who shall willfully violate any lawful rule or order of the board or who shall engage in the business of drilling, making, altering, or rehabilitating water wells or monitoring wells without first having obtained a license as in this chapter required or who shall violate any provision of this chapter shall be guilty of a misdemeanor and upon conviction shall be subject to a fine of not more than $500 or imprisonment in a county jail for a term not exceeding 6 months, or both. Any violation of this chapter shall be prosecuted by the county attorney in the county in which the violation occurred or is occurring, and the trial thereof shall be held in that county.

History: En. Sec. 13, Ch. 176, L. 1961; R.C.M. 1947, 66-2613; amd. Sec. 13, Ch. 538, L. 1987.

Cross-References

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

Part 4

Miscellaneous Provisions

37-43-401. No action or counterclaim to be maintained except by licensee. No action or counterclaim shall be maintained by any water well contractor, water well driller, or monitoring well constructor in any court in this state with respect to any agreement, work, labor, or materials for which a license is required by this chapter or to recover the agreed price or any compensation under any such agreement or for any such work, labor, or materials for which a license is required by this chapter without alleging and proving that such water well contractor, water well driller, or monitoring well constructor had a valid license at the time of making such agreement and of supplying such labor, work, or materials.

History: En. Sec. 12, Ch. 176, L. 1961; R.C.M. 1947, 66-2612; amd. Sec. 14, Ch. 538, L. 1987.

Cross-References

Counterclaim and cross-claim, Rule 13, M.R.Civ.P. (see Title 25, ch. 20).

37-43-402. Completion of contracts by successor in interest of licensee. Upon the transfer by operation of law to the successor in interest of a licensed water well contractor's or monitoring well constructor's rights under a contract or agreement for the drilling, making, or construction of a water well or monitoring well, the successor in interest to such rights shall be permitted to engage in the business of drilling, making, or construction of water wells or monitoring wells to the extent necessary to perform the obligations of said licensee under such contract or agreement, provided that such engagement in business shall be under the supervision of a licensed water well contractor or monitoring well constructor.

History: En. Sec. 1, Ch. 234, L. 1963; R.C.M. 1947, 66-2615; amd. Sec. 15, Ch. 538, L. 1987.

CHAPTERS 44 THROUGH 46

RESERVED

CHAPTER 47

OUTFITTERS AND GUIDES

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Part 4 — Relative Duties of Outfitters, Guides, and Participants

37-47-401. Purpose.
37-47-402. Duties of outfitters and guides.
37-47-403. Duties of participants.
37-47-404. Responsibility for violations of law.

Chapter Cross-References
Penalties cumulative, 87-1-102.

Part 1

General

37-47-101. *(Temporary)* **Definitions.** As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of outfitters provided for in 2-15-1883.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "License year" means that period commencing January 1 and ending December 31 of the same year.

(4) "Nonresident" means a person other than a resident.

(5) "Outfitter" means any person, except a person providing services on real property that he owns for the primary pursuit of bona fide agricultural interests, who:

(a) engages in the business of outfitting for hunting or fishing parties, as the term is commonly understood;

(b) for consideration provides any saddle or pack animal or personal service for hunting or fishing parties or camping equipment, vehicles, or other conveyance, except boats, for any person to hunt, trap, capture, take, or kill any game and accompanies such a party or person on an expedition for any of these purposes;

(c) for consideration furnishes a boat or other floating craft and accompanies any person for the purpose of catching fish; or

(d) for consideration aids or assists any person in locating or pursuing any game animal.

(6) "Professional guide" and "guide" mean a person:

(a) who is an employee of an outfitter and who furnishes only personal guiding services in assisting a person to hunt or take game animals or fish and who does not furnish any facilities, transportation, or equipment; or

(b) who has contracted independently with an outfitter and who furnishes personal guiding services and facilities, transportation, or equipment that he owns in assisting a person to hunt or take game birds or fish. A guide who provides independent contractor services to an outfitter may not provide facilities, equipment, or services for overnight use.

(7) "Resident" means a person who qualifies for a resident Montana hunting or fishing license under 87-2-102.

(8) "Participant" means a person using the services offered by a licensed outfitter or professional guide.

37-47-101. *(Effective July 1, 1991)* **Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "License year" means that period commencing January 1 and ending December 31 of the same year.

(2) "Nonresident" means a person other than a resident.

(3) "Outfitter" means any person, except a person providing services on real property that he owns for the primary pursuit of bona fide agricultural interests, who:

(a) engages in the business of outfitting for hunting or fishing parties, as the term is commonly understood;

(b) for consideration provides any saddle or pack animal or personal service for hunting or fishing parties or camping equipment, vehicles, or other conveyance, except boats, for any person to hunt, trap, capture, take, or kill any game and accompanies such a party or person on an expedition for any of these purposes;

(c) for consideration furnishes a boat or other floating craft and accompanies any person for the purpose of catching fish; or

(d) for consideration aids or assists any person in locating or pursuing any game animal.

(4) "Outfitters' council" means the Montana outfitters' council provided for in 2-15-1883.

(5) "Professional guide" and "guide" mean a person:

(a) who is an employee of an outfitter and who furnishes only personal guiding services in assisting a person to hunt or take game animals or fish and who does not furnish any facilities, transportation, or equipment; or

(b) who has contracted independently with an outfitter and who furnishes personal guiding services and facilities, transportation, or equipment in assisting a person to hunt or take game animals or fish.

(6) "Resident" means a person who qualifies for a resident Montana hunting or fishing license under 87-2-102.

(7) "Participant" means a person using the services offered by a license outfitter or professional guide.

History: **Ap. p. Sec. 1, Ch. 221, L. 1971; amd. Sec. 37, Ch. 511, L. 1973; amd. Sec. 17, Ch. 9, L. 1977; Sec. 26-908, R.C.M. 1947; Ap. p. Sec. 69, Ch. 173, L. 1917; re-en. Sec. 3748, R.C.M. 1921; re-en. Sec. 3748, R.C.M. 1935; amd. Sec. 4, Ch. 173, L. 1949; amd. Sec. 3, Ch. 184, L. 1951; amd. Sec. 2, Ch. 223, L. 1955; amd. Sec. 1, Ch. 541, L. 1975; amd. Sec. 16, Ch. 9, L. 1977; Sec. 26-904, R.C.M. 1947; R.C.M. 1947, 26-904(1), 26-908; amd. Sec. 1, Ch. 170, L. 1981; amd. Sec. 2, Ch. 545, L. 1981; amd. Sec. 1, Ch. 410, L. 1983; amd. Sec. 2, Ch. 528, L. 1987; Sec. 87-4-101, MCA 1985; redes. 37-47-101 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 1, Ch. 565, L. 1989.**

Compiler's Comments

1989 Amendment: In definition of professional guide, after """Professional guide""", inserted "and "guide"" and inserted (b) relating to a person who contracts independently as a guide; and made minor changes in phraseology.

Cross-References

Outfitter to perform all activities listed under definition or a more restrictive special license, 37-47-308.

37-47-102. *(Temporary)* **Determination of what constitutes consideration.** The providing of the services, property, or equipment mentioned in 37-47-101(5) or the advertising of services to assist persons to hunt, pursue, or take wildlife or to fish shall be presumed to have been for consideration for the purposes of this chapter.

37-47-102. *(Effective July 1, 1991)* **Determination of what constitutes consideration.** The providing of the services, property, or equipment mentioned in 37-47-101(3) or the advertising of services to assist persons to hunt, pursue, or take wildlife or to fish shall be presumed to have been for consideration for the purposes of this part.

History: **En. Sec. 69, Ch. 173, L. 1917; re-en. Sec. 3748, R.C.M. 1921; re-en. Sec. 3748, R.C.M. 1935; amd. Sec. 4, Ch. 173, L. 1949; amd. Sec. 3, Ch. 184, L. 1951; amd. Sec. 2, Ch. 223, L. 1955; amd. Sec. 1, Ch. 541, L. 1975; amd. Sec. 16, Ch. 9, L. 1977; R.C.M. 1947, 26-904(2); amd. Sec. 3, Ch. 545, L. 1981; amd. Sec. 3, Ch. 528, L. 1987; Sec. 87-4-102, MCA 1985; redes. 37-47-102 by Sec. 11, Ch. 528, L. 1987.**

Part 2

Board of Outfitters

37-47-201. *(Temporary)* **Powers and duties of board relating to outfitters and guides.** The board shall:

(1) prepare and publish an information pamphlet which contains the names and addresses of all licensed outfitters. This pamphlet shall be available for free distribution as early as possible during each calendar year but not later than the second Friday in March. The pamphlet shall contain the names and addresses of only those outfitters who have a valid license for the current license year.

(2) cooperate with the federal government in matters of mutual concern regarding the business of outfitting and guiding in Montana;

(3) enforce the provisions of this chapter and rules adopted pursuant to this chapter;

(4) establish outfitter standards and professional guide standards;

(5) adopt:

(a) rules of procedure;

(b) rules to administer and enforce this chapter, including but not limited to rules prescribing all requisite qualifications for licensure. These qualifications must include training, experience, knowledge of rules of governmental bodies pertaining to outfitting, and condition and type of gear and equipment; and

(c) any reasonable rules, not in conflict with this chapter, necessary for safeguarding the health, safety, and welfare of those persons using the services of outfitters and for the protection of landowners and the general public;

(6) hold hearings and proceedings to suspend or revoke licenses of outfitters and professional guides for due cause.

37-47-201. *(Effective July 1, 1991)* **Powers and duties of department relating to outfitters and guides.** The department shall:

(1) prepare and publish an information pamphlet which contains the names and addresses of all licensed outfitters. This pamphlet shall be available for free distribution as early as possible during each calendar year but not later than the second Friday in March. The pamphlet shall contain the names and addresses of only those outfitters who have a valid license for the current license year. The costs of publication of the pamphlet shall be paid from the state special revenue fund, fish and game account.

(2) cooperate with the federal government through its appropriate agencies or instrumentalities in matters of mutual concern regarding the business of outfitting and guiding in Montana;

(3) establish a minimum of two meetings annually with the outfitters' council;

(4) consult with the outfitters' council to develop policy concerning the administration of outfitting;

(5) designate a warden with no conflict of interest whose primary duties are to administer outfitting and guiding laws and regulations;

(6) when the commission determines it necessary to protect the fishing resource, public health, public safety, or public welfare, establish and regulate a moratorium on either or both the Madison River or Big Hole River, the issuance of outfitter licenses for the purpose of float fishing as defined in 37-47-101(3)(c) except that those fishing outfitters licensed in 1980 may receive renewal licenses, if qualified. The total number of professional guide

licenses endorsed by fishing outfitters under a moratorium may not be less than the total number issued in 1980.

History: **En. Sec. 4, Ch. 221, L. 1971; amd. Sec. 38, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-911; amd. Sec. 1, Ch. 490, L. 1981; amd. Sec. 5, Ch. 545, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 4, Ch. 528, L. 1987; Sec. 87-4-104, MCA 1985; redes. 37-47-201 by Sec. 11, Ch. 528, L. 1987.**

Part 3

Licensing

37-47-301. License required — services performed — standards. (1) No person may act as an outfitter or professional guide or advertise as an outfitter without first securing a license in accordance with the provisions of this part.

(2) Whenever an outfitter is engaged by any person, the outfitter shall keep and submit records as required by the department.

(3) Outfitters, professional guides, and their employees may not shoot, kill, or take big game animals for or in competition with those employing them while acting under employment as outfitters or professional guides.

(4) Outfitters utilizing lands under the control of the United States government shall obtain the proper permits required by the government office responsible for the area in which the outfitter intends to operate and shall comply with environmental protection standards established for these lands.

(5) An outfitter may not willfully and substantially misrepresent his facilities, prices, equipment, services, or hunting or fishing opportunities.

(6) Outfitters and their employees shall take every reasonable measure to provide their advertised services to their clients.

History: **En. Sec. 7, Ch. 221, L. 1971; amd. Sec. 20, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-914; amd. Sec. 8, Ch. 545, L. 1981; Sec. 87-4-121, MCA 1985; redes. 37-47-301 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 2, Ch. 565, L. 1989.**

Compiler's Comments

1989 Amendment: Near beginning of (3) inserted "professional guides" and at end substituted "outfitters or professional guides" for "an outfitter".

37-47-302. Outfitter's qualifications. Each applicant for and holder of an outfitter's license or any renewal thereof shall meet the following qualifications:

(1) be a person of at least 18 years of age who is physically capable and mentally competent to perform his duties as an outfitter;

(2) own or hold under written lease or represent a company, corporation, or partnership who owns or holds under written lease the equipment and facilities as are necessary to provide the services advertised, contracted for, or agreed upon between the outfitter and his clients (all equipment and facilities shall be subject to inspection at all reasonable times and places by the board or its designated agent);

(3) be a person who has demonstrated a respect for and compliance with the laws of any state or of the United States and all rules promulgated thereunder as to matters of fish and game, conservation of natural resources, and preservation of the natural ecosystem without pollution thereof;

(4) have not been convicted or forfeited bond of $100 or more on more than one violation of the fish and game laws or applicable regulations of any state or the United States within the past 5 years;

(5) have not, at any time, practiced fraud, deception, or material misrepresentation in procuring any previous outfitter's, professional guide's, or conservation license from the state of Montana;

(6) have not, at any time, promulgated any false or misleading advertising relating to the business of outfitting;

(7) have not been finally adjudged by a court of law guilty of any substantial breach of written or oral contract with any person utilizing the applicant's services as an outfitter or professional guide during the license year immediately preceding that for which the application is made;

(8) have not committed any negligent act or misconduct while acting as an outfitter or professional guide that caused a danger or unreasonable risk of danger to person or property of any client of such outfitter or professional guide during the license year immediately preceding that for which the application is made;

(9) have not, at any time, pleaded guilty to or been adjudged by a court guilty of a felony, unless civil rights have been restored pursuant to law. No person may apply for or hold an outfitter's license during any period of time in which a sentence has been deferred or suspended for a felony.

(10) have substantially complied with all board regulations and state and federal laws concerning outfitters and professional guides, if the applicant has previously held a license as an outfitter or professional guide.

History: En. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-915(3)(a) thru (3)(k); amd. Sec. 9, Ch. 545, L. 1981; amd. Sec. 8, Ch. 239, L. 1983; amd. Sec. 10, Ch. 528, L. 1987; Sec. 87-4-122, MCA 1985; redes. 37-47-302 by Sec. 11, Ch. 528, L. 1987.

37-47-303. Professional guide's qualifications. (1) An applicant for a professional guide's license shall meet the following requirements:

(a) be a person of at least 18 years of age who is physically capable and mentally competent to perform his duties as a professional guide;

(b) be endorsed and recommended by an outfitter with a valid license;

(c) have not been convicted or forfeited bond of $100 or more on more than one violation of the fish and game laws or applicable regulations of the state of Montana or the United States within the past 5 years;

(d) have not committed any gross negligent act or misconduct while acting as a guide that caused an accident or injury to person or property of any client of an outfitter during the license year immediately preceding that for which the application is made;

(e) have not, at any time, pleaded guilty to or been adjudged by a court guilty of a felony, unless civil rights have been restored pursuant to law. No person may apply for or hold a professional guide's license during any period of time in which a sentence has been deferred or suspended for a felony.

(2) A professional guide shall have been issued a valid wildlife conservation license.

History: En. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-915(4), (5); amd. Sec. 10, Ch. 545, L. 1981; Sec. 87-4-123, MCA 1985; redes. 37-47-303 by Sec. 11, Ch. 528, L. 1987.

37-47-304. Application. (1) Each applicant for an outfitter's or professional guide's license shall make application for license upon a form to be prescribed and furnished by the board which shall include:

(a) the applicant's full name, residence, address, conservation license number, driver's license number, birth date, physical description, and telephone number;

(b) the address of his principal place of business in the state of Montana;

(c) the amount and kind of property and equipment owned and used in the outfitting business of the applicant;

(d) the experience of the applicant, including years of experience as an outfitter or professional guide, knowledge of areas in which he has operated and intends to operate, and ability to cope with weather conditions and terrain;

(e) a signed statement of the licensed outfitter by whom the professional guide is to be employed or retained as an independent contractor that the professional guide is in fact to be employed or retained as an independent contractor by such outfitter and stating that the outfitter recommends the applicant for his qualifications;

(f) an affidavit by the outfitter to the board that the equipment listed on the application is in fact owned or leased by the applicant, is in good operating condition, and is sufficient and satisfactory for the services advertised or contemplated to be performed by such applicant;

(g) a statement of the maximum number of guests to be taken at any one time;

(h) the written approval of the appropriate agency or landowner on whose lands he will establish hunting camps.

(2) Applications for outfitter's license shall be in the name of an individual person only. Applications involving corporations or partnerships shall be made by one individual person who qualifies under the provisions of this part; any license issued pursuant thereto shall be in the name of that person; and the license shall specifically state that the same is issued for the use and benefit of the named corporation or partnership involved. Any revocation or suspension of such a license is binding upon the individual person and the partnership or corporation for the use and benefit of which the license was originally issued.

(3) Application shall be made to and filed with the board.

(4) Only one application for an outfitter's or professional guide's license may be made in any one license year. If any application is denied, subsequent applications by the same applicant for the license year involved are void, except as provided in 37-47-308.

History: En. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-915(1), (2), (13); amd. Sec. 11, Ch. 545, L. 1981; amd. Sec. 10, Ch. 528, L. 1987; Sec. 87-4-124, MCA 1985; redes. 37-47-304 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 3, Ch. 565, L. 1989.

Compiler's Comments

1989 Amendment: In (1)(e), in two places following "employed", inserted "or retained as an independent contractor".

37-47-305. Outfitter's examination. Each applicant for an outfitter's license shall pass a standard examination administered by the board or its agent, which examination shall require general and sufficient knowledge displaying and indicating ability to perform the services contemplated with efficiency and with safety to the health and welfare of persons employing such services. The examination shall test the applicant's knowledge of subjects which shall apply to the type of license applied for in the following subjects:

(1) federal and state fish and game laws and regulations;
(2) practical woodsmanship;
(3) general knowledge of big game;
(4) field preparation of trophies;
(5) care of game meat;
(6) use of outfitter's gear as listed on the application;
(7) knowledge of area and terrain;
(8) knowledge of firearms;
(9) federal and state regulations as applicable to outfitting;
(10) first aid;
(11) boat safety;
(12) water safety;
(13) care and safety of livestock.

History: En. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-915(3)(l); amd. Sec. 12, Ch. 545, L. 1981; amd. Sec. 10, Ch. 528, L. 1987; Sec. 87-4-125, MCA 1985; redes. 37-47-305 by Sec. 11, Ch. 528, L. 1987.

37-47-306. *(Temporary)* **Fees.** (1) The board shall establish fees commensurate with costs as provided in 37-1-134.

(2) Applications shall be accompanied by a license fee as specified by the board.

(3) If a nonresident resides in a state requiring residents of the state of Montana to pay in excess of the amount established by the board for a similar license, the fee for such nonresident outfitter's or professional guide's license shall be the same amount as the higher fee charged in the state where the nonresident resides.

(4) The license fees must be deposited in the state special revenue fund and must be used by the board to investigate the applicant, to enforce this part, and for administrative costs, subject to 37-1-101(6).

37-47-306. *(Effective July 1, 1991)* **Fees.** (1) The department shall establish fees commensurate with costs as provided in 37-1-134.

(2) Applications shall be accompanied by a license fee as specified by the department.

(3) If a nonresident resides in a state requiring residents of the state of Montana to pay in excess of the amount established by the department for a similar license, the fee for such nonresident outfitter's or professional guide's license shall be the same amount as the higher fee charged in the state where the nonresident resides. All fees collected under this part shall be deposited as provided in 87-1-601.

(4) The license fee shall be used to investigate the applicant, to enforce this part, and for administrative costs.

History: Ap. p. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; Sec. 26-915, R.C.M. 1947; Ap. p. Sec. 10, Ch. 221, L. 1971; amd. Sec. 23, Ch. 9, L. 1977; Sec. 26-917, R.C.M. 1947; R.C.M.

1947, 26-915(8) thru (11), 26-917; amd. Sec. 14, Ch. 545, L. 1981; amd. Sec. 4, Ch. 192, L. 1983; amd. Sec. 5, Ch. 528, L. 1987; Sec. 87-4-127, MCA 1985; redes. 37-47-306 by Sec. 11, Ch. 528, L. 1987.

37-47-307. *(Temporary)* **Investigation of applicant — issuance or denial of license.** (1) The board shall investigate each applicant for an outfitter's or professional guide's license and determine his qualifications.

(2) The board may deny or refuse to issue any new license or to renew any previous license if the applicant does not meet the qualifications herein stated. In the event that any application for license is denied or refused, the board shall immediately notify the applicant, setting forth in the notice the grounds upon which the denial or refusal is based.

(3) Final decision as to issuance of renewal licenses shall be made not later than 30 days from the date of receipt of the completed application for renewal and not later than 90 days from the date of receipt of a completed application for a new license.

(4) A licensee in good standing is entitled to a new license for the ensuing license year upon complying with the provisions of this chapter, completing an application for license renewal on a form provided by the board, and payment of the renewal fee, but is exempt from having to retake the written examination.

(5) An outfitter licensee must make an application for license renewal by January 1 of the license year. A penalty fee of $50 will be charged in addition to the regular resident or nonresident outfitter's license fee if the application for such license is not completed and made by January 1 of the license year. This subsection does not apply to a new applicant for an outfitter's license.

37-47-307. *(Effective July 1, 1991)* **Investigation of applicant — issuance or denial of license.** (1) The director in his discretion may cause to be made such additional investigation and inquiry relative to the applicant for outfitter's or professional guide's license and an applicant's qualifications as he considers advisable.

(2) The director may deny or refuse to issue any new license or to renew any previous license if, in his opinion, the applicant does not meet the qualifications herein stated. In the event that any application for license is denied or refused, the director shall immediately notify the applicant, setting forth in the notice the grounds upon which the denial or refusal is based.

(3) Final decision as to issuance of renewal licenses shall be made not later than 30 days from the date of receipt of the completed application for renewal and not later than 90 days from the date of receipt of a completed application for a new license.

(4) A licensee in good standing is entitled to a new license for the ensuing license year upon complying with the provisions of this part and completing an application for license renewal on a form provided by the department but is exempt from having to retake the written examination.

(5) An outfitter licensee must make an application for license renewal by January 1 of the license year. A penalty fee of $50 will be charged in addition to the regular resident or nonresident outfitter's license fee if the application for such license is not completed and made by January 1 of the license year. This subsection does not apply to a new applicant for an outfitter's license.

History: En. Sec. 8, Ch. 221, L. 1971; amd. Sec. 13, Ch. 94, L. 1973; amd. Sec. 3, Ch. 541, L. 1975; amd. Sec. 21, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; R.C.M. 1947, 26-915(12);

amd. Sec. 15, Ch. 545, L. 1981; amd. Sec. 9, Ch. 239, L. 1983; amd. Sec. 6, Ch. 528, L. 1987; Sec. 87-4-128, MCA 1985; redes. 37-47-307 by Sec. 11, Ch. 528, L. 1987.

37-47-308. Kinds of licenses. (1) After receipt of the application and when all the conditions and requirements of this part have been satisfied, the board shall issue either of the following licenses, depending upon its determination of the applicant's ability and the service that the applicant can perform with the equipment listed on his application:

(a) a general license authorizing him to perform all the functions of an outfitter as that term is defined in 37-47-101; or

(b) a special license authorizing him to perform only the function of outfitting listed on the license.

(2) The license shall be in the form prescribed and shall be valid for the licensing year in which issued.

(3) If the application is denied, the board shall notify the applicant in writing of the reasons for the denial, and if the reasons are corrected, a license shall be issued upon reapplication thereof.

History: En. Sec. 9, Ch. 221, L. 1971; amd. Sec. 4, Ch. 541, L. 1975; amd. Sec. 22, Ch. 9, L. 1977; R.C.M. 1947, 26-916(1); amd. Sec. 10, Ch. 528, L. 1987; Sec. 87-4-129, MCA 1985; redes. 37-47-308 by Sec. 11, Ch. 528, L. 1987.

Cross-References

Limit on application for an outfitter's or guide's license, 37-47-304.

37-47-309. Professional guide's license. (1) For the purposes of this part, a person may serve as a professional guide under an outfitter's license, after submitting his application with the proper license fee, until the license is issued or denied.

(2) To be valid, a professional guide's license must bear the signature and outfitter's license number of the endorsing outfitter and is valid only while the holder of such license is employed or retained as an independent contractor by the endorsing outfitter.

History: En. Sec. 9, Ch. 221, L. 1971; amd. Sec. 4, Ch. 541, L. 1975; amd. Sec. 22, Ch. 9, L. 1977; R.C.M. 1947, 26-916(2), (3); amd. Sec. 16, Ch. 545, L. 1981; Sec. 87-4-130, MCA 1985; redes. 37-47-309 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 4, Ch. 565, L. 1989.

Compiler's Comments

1989 Amendment: In middle of (1), before "license", substituted "an outfitter's" for "his employer's"; and near end of (2), after "employed", inserted "or retained as an independent contractor".

37-47-310. Transfer or amendment of outfitter's license. (1) No outfitter's license may be transferred during any license year.

(2) An individual person may, upon proper showing, have his outfitter's license amended to indicate that he is holding the license for the use and benefit of a named partnership or corporation.

(3) Subject to approval by the board, the immediate members of the family of a deceased licensed outfitter may continue to outfit for the deceased outfitter's unexpired license year or until the heirs or personal representative of the estate sells the outfitting business or obtains relicensure therefor.

History: En. Sec. 9, Ch. 221, L. 1971; amd. Sec. 4, Ch. 541, L. 1975; amd. Sec. 22, Ch. 9, L. 1977; R.C.M. 1947, 26-916(4); amd. Sec. 17, Ch. 545, L. 1981; amd. Sec. 10, Ch. 528, L. 1987; Sec. 87-4-131, MCA 1985; redes. 37-47-310 by Sec. 11, Ch. 528, L. 1987.

37-47-311. Limit one license. No person may hold more than one outfitter's license either for his own benefit or for the use and benefit of a partnership or corporation, nor may the name of any partnership or corporation appear on more than one current outfitter's license.

History: En. Sec. 9, Ch. 221, L. 1971; amd. Sec. 4, Ch. 541, L. 1975; amd. Sec. 22, Ch. 9, L. 1977; R.C.M. 1947, 26-916(5); Sec. 87-4-132, MCA 1985; redes. 37-47-311 by Sec. 11, Ch. 528, L. 1987.

37-47-312. Expiration of license. Notwithstanding any other provision or law, a license shall expire on the last day of the license year for which it was issued.

History: En. Sec. 9, Ch. 221, L. 1971; amd. Sec. 4, Ch. 541, L. 1975; amd. Sec. 22, Ch. 9, L. 1977; R.C.M. 1947, 26-916(6); Sec. 87-4-133, MCA 1985; redes. 37-47-312 by Sec. 11, Ch. 528, L. 1987.

37-47-313 through 33-47-340 reserved.

37-47-341. Grounds for suspension or revocation of license. Every license or right to apply for and hold such license may be suspended or revoked upon any of the following grounds:

(1) having ceased to meet all of the qualifications for holding a license;

(2) fraud or deception in procuring a license;

(3) fraudulent, untruthful, or misleading advertising;

(4) having pleaded guilty to or been adjudged by a court guilty of a felony, including a case in which the sentence is suspended or imposition of the sentence is deferred, unless civil rights have been restored pursuant to law;

(5) two convictions or bond forfeitures of $100 or more as to violations of the fish and game or outfitting laws or regulations of the state of Montana or of the United States within the past 5 years;

(6) a substantial breach of any contract with any person utilizing the services of the license holder provided that such breach is established as a matter of final judgment in a court of law;

(7) the willful employment of or contracting with an unlicensed professional guide by an outfitter;

(8) negligence or misconduct while acting as an outfitter or professional guide that causes an accident or injury to person or property of any client of such outfitter or professional guide.

History: En. Sec. 11, Ch. 221, L. 1971; amd. Sec. 5, Ch. 541, L. 1975; amd. Sec. 8, Ch. 417, L. 1977; R.C.M. 1947, 26-918; amd. Sec. 18, Ch. 545, L. 1981; Sec. 87-4-141, MCA 1985; redes. 37-47-341 by Sec. 11, Ch. 528, L. 1987; amd. Sec. 5, Ch. 565, L. 1989.

Compiler's Comments

1989 Amendment: In (7) inserted "or contracting with".

37-47-342. *(Temporary)* **Procedure for suspension or revocation of license — reissuance.** (1) Proceedings for the revocation or suspension of a license issued hereunder may be taken upon charge or recommendation of any person. All such charges or recommendations must be made in writing, must state the facts upon which such charge or recommendation is based, and must be signed and sworn to by the person making the charge or recommendation. Any such charge or recommendation shall be filed with the board.

Thereupon, the board shall initiate a preliminary investigation of all facts in connection with the charge.

(2) If the accusation be deemed to be unfounded or trivial, the board shall dismiss the same and will advise the licensee charged and the complaining party of the action. If the board determines the charge or recommendation to have good cause and to be sufficiently founded, it shall appoint a hearing officer who shall conduct a hearing on such charges in accordance with the Montana Administrative Procedure Act.

(3) The board thereupon shall cause a copy of the charge and a record of the investigation to be served upon the licensee involved not less than 20 days prior to the day set for hearing thereon, which hearing shall be before an appointed hearing officer at a time and place set by such officer. At the hearing, the licensee involved may be represented by counsel. After full, fair, and impartial hearing, the board may suspend the accused's license or his right to hold a license for a period not to exceed 3 years, may order the license revoked, or may dismiss the charge or recommendation based upon the facts shown at the hearing.

(4) A revoked or suspended license may be reissued or reinstated at the discretion of the board.

37-47-342. *(Effective July 1, 1991)* **Procedure for suspension or revocation of license — reissuance.** (1) Proceedings for the revocation or suspension of a license issued hereunder may be taken upon charge or recommendation of any person. All such charges or recommendations must be made in writing, must state the facts upon which such charge or recommendation is based, and must be signed and sworn to by the person making the charge or recommendation. Any such charge or recommendation shall be filed with the director. Thereupon, the director shall initiate a preliminary investigation of all facts in connection with the charge.

(2) A copy of all information shall be transmitted to the outfitters' council. The outfitters' council may make recommendation as to the action to be taken. Any such recommendation shall be made in writing and delivered to the director within 20 days after date of transmittal of such information to the council.

(3) If the accusation be deemed to be unfounded or trivial, the director shall dismiss the same and will advise the licensee charged and the complaining party of the action. Should the director determine the charge or recommendation to have good cause and to be sufficiently founded, he shall appoint a hearing officer who shall conduct a hearing on such charges in accordance with the Montana Administrative Procedure Act.

(4) The director thereupon shall cause a copy of the charge, recommendation of the council, and a record of the investigation to be served upon the licensee involved not less than 20 days prior to the day set for hearing thereon, which hearing shall be before an appointed hearing officer at a time and place set by such officer. At the hearing, the licensee involved may be represented by counsel. After full, fair, and impartial hearing, the director may suspend the accused's license or his right to hold a license for a period not to exceed 3 years, may order the license revoked, or may dismiss the charge or recommendation based upon the facts shown at the hearing.

(5) A revoked or suspended license may be reissued or reinstated at the discretion of the director.

History: En. Sec. 12, Ch. 221, L. 1971; amd. Sec. 6, Ch. 541, L. 1975; amd. Sec. 9, Ch. 417, L. 1977; R.C.M. 1947, 26-919; amd. Sec. 19, Ch. 545, L. 1981; amd. Sec. 7, Ch. 528, L. 1987; Sec. 87-4-142, MCA 1985; redes. 37-47-342 by Sec. 11, Ch. 528, L. 1987.

Cross-References

Contested cases — Montana Administrative Procedure Act, Title 2, ch. 4, part 6.

37-47-343. Appeal procedure. Any person who feels aggrieved by the denial of issuance of a license or suspension or revocation of a license as an outfitter or professional guide may appeal to the district court of the county of his residence within 30 days after the date of such action by filing with the clerk of said court a notice of appeal briefly setting forth the action complained of and appealed from. Summons and copy of the notice of appeal shall be served on the board, and all proceedings shall conform to the code of civil procedure of the state of Montana. Upon such appeal, the action shall be by trial de novo, and upon demand in writing, either party shall be entitled to trial by jury. The court may sustain or reverse the action of the board or take such other action as the court may deem just and proper. If the board or the court has ordered a stay of any revocation or suspension and the board's revocation or suspension is thereafter sustained by the court, the period of suspension or revocation shall begin with the first day after the court's action sustaining the decision of the board.

History: En. Sec. 13, Ch. 221, L. 1971; amd. Sec. 7, Ch. 541, L. 1975; amd. Sec. 10, Ch. 417, L. 1977; R.C.M. 1947, 26-920; amd. Sec. 20, Ch. 545, L. 1981; amd. Sec. 10, Ch. 528, L. 1987; Sec. 87-4-143, MCA 1985; redes. 37-47-343 by Sec. 11, Ch. 528, L. 1987.

Cross-References

Judicial review of contested cases — Montana Administrative Procedure Act, Title 2, ch. 4, part 7.

37-47-344. Penalties — disposition of fines. (1) A person who violates any provision of this chapter or rule adopted under this chapter is guilty of a misdemeanor and is punishable by a fine not exceeding $500.

(2) A person who represents himself as an outfitter or purposely engages in outfitting without a license as required by this chapter is guilty of a misdemeanor and is punishable by a fine of not less than $200 and not more than $500. In addition, the person must be assessed the amount of all costs incurred by the board in investigating and preparing the case for trial.

(3) Fifty percent of all fines paid under this section must be deposited in the general fund of the county in which the conviction is obtained, and 50% must be deposited in the state special revenue fund for the use of the board in enforcing this chapter.

History: En. Sec. 8, Ch. 528, L. 1987.

37-47-345. Enforcement. Investigations and arrests for violations of this chapter may be made by any peace officer; warden of the department of fish, wildlife, and parks; or federal agency enforcement personnel.

History: En. Sec. 9, Ch. 528, L. 1987.

Part 4

Relative Duties of Outfitters, Guides, and Participants

37-47-401. Purpose. It is recognized that some activities conducted by outfitters and guides within the scope of their authorized services are inherently hazardous to participants regardless of all feasible safety measures that can be taken. It is the purpose of this part to define those areas of responsibility and affirmative acts or omissions for which outfitters and guides are liable for loss, damage, or injury and those risks for which the participant expressly assumes or shall be considered to have voluntarily assumed the risk of loss or damage.

History: **En. Sec. 2, Ch. 170, L. 1981; Sec. 87-4-161, MCA 1985; redes. 37-47-401 by Sec. 11, Ch. 528, L. 1987.**

37-47-402. Duties of outfitters and guides. An outfitter or guide offering professional services in this state shall:

(1) act as would a reasonably prudent member of his respective profession while engaging in providing the services authorized to be performed by a licensed member of his profession;

(2) comply with all standards adopted by rule by the department of fish, wildlife, and parks.

History: **En. Sec. 3, Ch. 170, L. 1981; Sec. 87-4-162, MCA 1985; redes. 37-47-402 by Sec. 11, Ch. 528, L. 1987.**

37-47-403. Duties of participants. (1) A participant shall:

(a) act as would a reasonably prudent person when engaging in the activities offered by a licensed outfitter or guide in this state;

(b) receive permission from the outfitter or guide prior to embarking on any self-initiated activity and inform the outfitter or guide of his plans and intentions upon receiving permission to engage in such self-initiated activity.

(2) A participant may not:

(a) interfere with the running or operation of an outfitter's or guide's activities when such activities conform to the standards of care set forth in 37-47-402;

(b) use the outfitter's or guide's equipment, facilities, or services unless the participant has requested and received permission from the outfitter or guide;

(c) knowingly, purposely, or negligently engage in any type of conduct that contributes to or causes injury to himself or any other person.

History: **En. Sec. 4, Ch. 170, L. 1981; Sec. 87-4-163, MCA 1985; redes. 37-47-403 by Sec. 11, Ch. 528, L. 1987.**

37-47-404. Responsibility for violations of law. (1) Any person accompanying a hunting or fishing party as an outfitter or agent or employee of such outfitter shall be equally responsible with any person or party employing him as an outfitter for any violation of fish and game laws; any such outfitter or employee of such outfitter who shall willfully fail to or refuse to report any violation of fish and game laws shall be liable to the penalties as herein provided. If any professional guide commits any violation of the laws or applicable regulations relating to fish and game, outfitting, or guiding with actual or implied knowledge of an outfitter then employing such guide, the outfitter is legally responsible for such violation for all purposes under the laws or regulations if the outfitter fails to report any such violation to proper authority.

(2) No person may hire or retain any outfitter or professional guide unless the outfitter or professional guide is currently licensed in accordance with the laws of the state of Montana.

History: En. Sec. 71, Ch. 173, L. 1917; re-en. Sec. 3750, R.C.M. 1921; re-en. Sec. 3750, R.C.M. 1935; amd. Sec. 6, Ch. 173, L. 1949; amd. Sec. 5, Ch. 184, L. 1951; amd. Sec. 3, Ch. 223, L. 1955; amd. Sec. 2, Ch. 541, L. 1975; R.C.M. 1947, 26-906; amd. Sec. 4, Ch. 545, L. 1981; Sec. 87-4-103, MCA 1985; redes. 37-47-404 by Sec. 11, Ch. 528, L. 1987.

CHAPTERS 48 AND 49

RESERVED

CHAPTER 50

PUBLIC ACCOUNTANTS

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37-50-341. Initiation of proceedings — hearings and rulemaking.
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Part 4 — Miscellaneous Provisions

37-50-401. False statements by accountants — misdemeanor — penalty.
37-50-402. Privileged communications.

Chapter Cross-References

Licensed public accountant — exemption from regulation of escrow business, 32-7-103.

Professional service corporations, Title 35, ch. 4.

Part 1

General

37-50-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of public accountants provided for in 2-15-1866.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Practice of public accounting" means performing or offering to perform by a person certified under 37-50-302 or licensed under 37-50-303, for a client or potential client, one or more types of services involving the use of accounting or auditing skills, including:

(a) the issuance of reports or financial statements on which the public may rely;

(b) one or more types of management advisory or consulting services;

(c) the preparation of tax returns; or

(d) furnishing advice on tax matters.

History: En. 66-1807.1 by Sec. 160, Ch. 350, L. 1974; R.C.M. 1947, 66-1807.1; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 2, Ch. 382, L. 1989.

Compiler's Comments

1989 Amendment: Inserted definition of practice of public accounting. Amendment effective July 1, 1989.

37-50-102. Exemptions. Nothing contained in this chapter shall prohibit any person not a certified public accountant or licensed public accountant from serving as an employee of or an assistant to a certified public accountant or a licensed public accountant holding a permit to practice under 37-50-314 or a partnership or corporation composed of certified public accountants or licensed public accountants registered under this chapter or a foreign accountant registered under 37-50-313, provided that such employee or assistant shall not issue any accounting or financial statement over his name.

History: En. Sec. 27, Ch. 118, L. 1969; R.C.M. 1947, 66-1839; amd. Sec. 4, Ch. 684, L. 1979; amd. Sec. 1, Ch. 335, L. 1983.

Part 2

Board of Public Accountants

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1865.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-50-201. Organization — general rulemaking power — quorum — seal — records. (1) The board shall elect annually a chairman and a secretary from its members.

(2) The board may adopt rules for the conduct of its affairs and the administration of this chapter.

(3) A quorum for the transaction of business consists of three members of the board.

(4) The board shall have a seal which shall be judicially noticed.

(5) The department shall keep records of the board's proceedings. In a proceeding in court, civil or criminal, arising out of or founded on this chapter, copies of these records certified as correct under the seal of the board are admissible in evidence as tending to prove the content of these records.

History: En. Sec. 3, Ch. 118, L. 1969; amd. Sec. 162, Ch. 350, L. 1974; amd. Sec. 35, Ch. 439, L. 1975; R.C.M. 1947, 66-1815(1) thru (5); amd. Sec. 5, Ch. 684, L. 1979; amd. Sec. 2, Ch. 335, L. 1983.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Public records, Title 2, ch. 6.

Entries in official books and records prima facie evidence, 26-1-605.

Entry made by officer or Board prima facie evidence, 26-1-606.

Requirement of authentication or identification, Rule 901, Montana Rules of Evidence (see Title 26, ch. 10).

Self-authentication, Rule 902, Montana Rules of Evidence (see Title 26, ch. 10).

Public records, Rule 1005, Montana Rules of Evidence (see Title 26, ch. 10).

Duties of Department, 37-1-101.

37-50-202. Compensation of members — expenses. Each member of the board is entitled to receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 3, Ch. 118, L. 1969; amd. Sec. 162, Ch. 350, L. 1974; amd. Sec. 35, Ch. 439, L. 1975; R.C.M. 1947, 66-1815(6); amd. Sec. 6, Ch. 684, L. 1979; amd. Sec. 28, Ch. 474, L. 1981.

37-50-203. Rules of the board. (1) The board may adopt such rules, consistent with the purposes of this chapter, as it considers necessary.

(2) The board shall adopt:

(a) rules of professional conduct appropriate to establish and maintain a high standard of integrity, dignity, and competency in the profession of public accounting, including competency in specific fields of public accounting;

(b) rules of procedure governing the conduct of matters before the board;

(c) rules governing education requirements, as provided in 37-50-305, for issuance of the certificate of a certified public accountant and the license for licensed public accountant;

(d) rules prescribing requirements for continuing education to be met by certified public accountants and licensed public accountants, in order to maintain their professional knowledge and competence, as a condition to continuing in the practice of public accounting. In issuing rules and individual orders regarding continuing education, the board in its discretion:

(i) may, among other things, use or rely upon guidelines and pronouncements of recognized educational and professional associations;

(ii) may prescribe the content, duration, and organization of courses; and

(iii) shall take into account the accessibility to applicants of such continuing education as it may require and any impediments to interstate practice of public accounting that may result from differences in such requirements in other states;

(e) rules governing partnerships and corporations practicing public accounting, including but not limited to rules concerning their style, name, title, and affiliation with any other organization and establishing reasonable standards with respect to professional liability insurance and unimpaired capital and prescribing joint and several liability for torts relating to professional services for shareholders of any such corporation failing to comply with such standards;

(f) internal rules considered necessary to initiate and conduct investigations and protect the confidences of the client of any certified public accountant or licensed public accountant subjected to board disciplinary proceedings;

(g) rules defining requirements for accounting experience, not exceeding 2 years, for issuance of the initial annual permit; and

(h) rules to enforce the provisions of this chapter, the purpose of which rules shall be to provide for the monitoring of the profession of public accounting and to maintain the quality of the accounting profession.

History: En. Sec. 5, Ch. 118, L. 1969; amd. Sec. 164, Ch. 350, L. 1974; R.C.M. 1947, 66-1817; amd. Sec. 7, Ch. 684, L. 1979; amd. Sec. 3, Ch. 335, L. 1983.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Duty of Board to adopt rules on conduct, 37-1-131.

37-50-204. Rulemaking powers relating to reexaminations. The board shall have power to prescribe by uniform rule for the following:

(1) the terms and conditions under which a candidate who passes one or more subjects of examination may be reexamined in only the remaining subjects, with credit for the subjects previously passed;

(2) a reasonable waiting period for a candidate's reexamination in a subject he has failed;

(3) the maximum number of reexaminations for which a candidate may apply;

(4) the fees to be charged each candidate for initial examinations and special examinations, which shall be commensurate with costs. With respect to reexaminations, a fee commensurate with costs may be charged for each subject in which the candidate is reexamined.

History: En. Sec. 14, Ch. 118, L. 1969; amd. Sec. 9, Ch. 533, L. 1977; R.C.M. 1947, 66-1826.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-50-205. Duties of the department. The department shall:

(1) assist the board in transactions of its business and keep a record of the board's official action; and

(2) assess to the board the reasonable costs of the department incurred in assisting the board.

History: En. Sec. 21, Ch. 684, L. 1979.

Cross-References

Duties of the Department, 37-1-101.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-50-301. Illegal use of title. (1) No person may assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a certified public accountant unless such person holds a current certificate as a certified public accountant under this chapter. However, a foreign accountant who has registered under the provisions of 37-50-313 may use the title under which he is generally known in his country, followed by the name of the country from which he received his certificate, license, or degree.

(2) No partnership or corporation shall assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such partnership or corporation is composed of certified public accountants unless it is registered under 37-50-331 or 37-50-332, whichever is applicable, and all of its offices in this state for the practice of public accounting are maintained and registered as required under 37-50-335.

(3) No person may assume or use the title or designation "licensed public accountant", "public accountant", or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a public accountant unless such person holds a current license as a licensed public accountant under this chapter.

(4) No partnership or corporation may assume or use the title or designation "licensed public accountant", "public accountant", or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such partnership or corporation is composed of public accountants unless it is registered under 37-50-331, 37-50-332, 37-50-333, or 37-50-334, whichever is applicable, and all of its offices in this state for the practice of public accounting are maintained and registered as required under 37-50-335.

(5) No person, corporation, or partnership may assume or use the title or designation "certified accountant", "chartered accountant", "enrolled accountant", "licensed accountant", "registered accountant", or any other title or designation likely to be confused with "certified public accountant", "licensed public accountant", "public accountant" or any of the abbreviations "CA", "EA", "LA", or "RA" or similar abbreviations likely to be confused with "CPA". However, a foreign accountant who has registered under 37-50-313 may use the title under which he is generally known in his country, followed by the name of the country from which he received his certificate, license, or degree.

(6) No person may sign or affix his name or any trade or assumed name used by him in his profession or business with any wording indicating that he has expert knowledge in accounting or auditing to any accounting or financial statement or to any opinion on, report on, or certificate to any accounting or financial statement unless he holds a current permit issued under 37-50-314 and all of his offices in this state for the practice of public accounting are maintained and registered under 37-50-335. However, the provisions of this subsection do not prohibit any officer, employee, partner, or principal of any organization from affixing his signature to any statement or report in reference to the financial affairs of that organization with any wording designating the position, title, or office which he holds in that organization, nor do the provisions of this subsection prohibit any act of a public official or public employee in the performance of his duties as such.

(7) No person may sign or affix a partnership or corporation name with any wording indicating that it is a partnership or corporation composed of persons having expert knowledge in accounting or auditing to any accounting or financial statement or to any report on or certificate to any accounting or financial statement unless the partnership or corporation is registered under 37-50-331, 37-50-332, 37-50-333, or 37-50-334 and all of its offices in this state for the practice of public accounting are maintained and registered as required under 37-50-335.

(8) No person may assume or use the title or designation "certified public accountant" or "public accountant" in conjunction with names indicating or implying that there is a partnership or corporation or in conjunction with the designation "and company" or "and co." or a similar designation if, in any such case, there is in fact no bona fide partnership or corporation registered under 37-50-331, 37-50-332, 37-50-333, or 37-50-334. However, it is lawful for a sole proprietor to continue the use of the deceased's name in connection with his business for a reasonable period of time after the death of a former partner.

History: En. Sec. 26, Ch. 118, L. 1969; amd. Sec. 5, Ch. 207, L. 1974; amd. Sec. 14, Ch. 101, L. 1977; R.C.M. 1947, 66-1838; amd. Sec. 8, Ch. 684, L. 1979; amd. Sec. 162, Ch. 575, L. 1981; amd. Sec. 4, Ch. 335, L. 1983.

37-50-302. Certified public accountants — certification — qualifications and requirements. The board shall grant an initial certificate as a certified public accountant to any person who:

(1) is of good moral character;

(2) has successfully passed the certified public accountants' examination; and

(3) meets the requirements of education set forth in this chapter and in board rules.

History: En. Sec. 7, Ch. 118, L. 1969; amd. Sec. 5, Ch. 168, L. 1971; amd. Sec. 166, Ch. 350, L. 1974; R.C.M. 1947, 66-1819; amd. Sec. 9, Ch. 684, L. 1979; amd. Sec. 5, Ch. 335, L. 1983.

37-50-303. Public accountants — licensure — qualifications and requirements. The board shall grant an initial license as a licensed public accountant to any person who:

(1) is of good moral character;

(2) meets the requirements of education set forth in this chapter and board rules; and

(3) complies with the qualifications and requirements in any one of the subsections of 37-50-304.

History: En. Sec. 8, Ch. 118, L. 1969; amd. Sec. 6, Ch. 168, L. 1971; amd. Sec. 167, Ch. 350, L. 1974; R.C.M. 1947, 66-1820; amd. Sec. 6, Ch. 341, L. 1981; amd. Sec. 163, Ch. 575, L. 1981; amd. Sec. 6, Ch. 335, L. 1983.

Cross-References

Rules for determining residency, 1-1-215.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-50-304. Public accountants — licensure without examination of former military personnel — examination otherwise required. (1) Persons serving in the armed forces of the United States on July 1, 1969, who immediately prior to entering this service held themselves out to the public as public accountants and who were engaged as principals in this state in the practice of public accounting as their principal occupation prior to service in the armed forces may register with the department within 6 months after the date of their separation from active service and, on registration and payment of the license fee, be issued a license by the department as a licensed public accountant. A principal is either the owner of or a partner in an existing accounting practice on July 1, 1969.

(2) A person who does not qualify under subsection (1) must fulfill the following additional requirements as a prerequisite to the issuance of a license as a licensed public accountant:

(a) He must pass the written examination in accounting practice.

(b) He must also pass the written examination in either accounting theory or auditing or, instead of the examination in auditing or theory, he must be the holder of a United States treasury card which is in good standing at the time of his sitting for the examination in accounting practice.

(3) The examinations referred to in subsection (2) shall be those prescribed for subjects under 37-50-308 and shall be conducted and graded by the same standards as those given to candidates for certified public accountant.

History: En. Sec. 9, Ch. 118, L. 1969; amd. Sec. 168, Ch. 350, L. 1974; R.C.M. 1947, 66-1821.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Duty of Department to administer and grade examinations, 37-1-101.

Licensing investigation and review — record access, 37-1-135.

37-50-305. Education requirements. (1) Prior to July 1, 1997, a candidate for certification as a certified public accountant or licensing as a licensed public accountant must have graduated from a college or university accredited to offer a baccalaureate degree:

(a) with a concentration in accounting; or

(b) with a concentration other than accounting if supplemented by experience or by related courses in other areas of business administration and the board determines that an equivalent education has been achieved.

(2) Beginning July 1, 1997, a candidate for certification as a certified public accountant or licensing as a licensed public accountant must have graduated from a college or university accredited to offer a baccalaureate degree:

(a) with an accounting concentration or its equivalent as determined by the board; and

(b) with at least 150 semester hours of credit, including those earned toward the baccalaureate degree or its equivalent.

History: En. Sec. 12, Ch. 118, L. 1969; R.C.M. 1947, 66-1824; amd. Sec. 10, Ch. 684, L. 1979; amd. Sec. 7, Ch. 335, L. 1983; amd. Sec. 3, Ch. 382, L. 1989.

Compiler's Comments

1989 Amendment: At beginning of (1) inserted "prior to July 1, 1997"; inserted (2) providing requirements for certification as public accountant; and made minor changes in form. Amendment effective July 1, 1989.

Cross-References

Licensing investigation and review — record access, 37-1-135.

37-50-306. Repealed. Sec. 26, Ch. 684, L. 1979.

History: En. Sec. 13, Ch. 118, L. 1969; amd. Sec. 169, Ch. 350, L. 1974; R.C.M. 1947, 66-1825(1), (2), (4), (5).

37-50-307. Repealed. Sec. 26, Ch. 684, L. 1979.

History: En. Sec. 18, Ch. 118, L. 1969; amd. Sec. 171, Ch. 350, L. 1974; R.C.M. 1947, 66-1830.

37-50-308. Examination. Except as provided in 37-1-101(4), the department shall administer a written examination in accounting, auditing, and related subjects as the board determines appropriate. The grade determination of the board is final in each case. The board may use the examination and grading services of the American institute of certified public accountants. The examination must be held at least annually and at such other times as applications warrant. The board may determine the time and place of examination and may adopt rules necessary for the orderly conduct of the examination.

History: En. Sec. 6, Ch. 118, L. 1969; amd. Sec. 165, Ch. 350, L. 1974; R.C.M. 1947, 66-1818; amd. Sec. 20, Ch. 22, L. 1979; amd. Sec. 11, Ch. 684, L. 1979; amd. Sec. 8, Ch. 335, L. 1983.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

37-50-309. Credit for examinations taken in other states. The board may by rule provide for granting credit to a candidate for his satisfactory completion of a written examination in any one or more of the subjects of examination given by the licensing authority in another state. These rules shall include requirements the board determines appropriate in order that an examination approved as a basis for credit is, in the judgment of the board, at least as thorough as that included in the examination given in this state at the time the credit originally was granted by the other state for passing the examination.

History: En. Sec. 13, Ch. 118, L. 1969; amd. Sec. 169, Ch. 350, L. 1974; R.C.M. 1947, 66-1825(3); amd. Sec. 12, Ch. 684, L. 1979.

37-50-310. Existing certificates sufficient. Persons who, on July 1, 1969, held certified public accountant certificates heretofore issued under the laws of this state shall not be required to obtain additional certificates under this chapter but shall otherwise be subject to all provisions of this chapter. Such certificates heretofore issued shall, for all purposes, be considered certificates issued under this chapter and subject to the provisions hereof.

History: En. Sec. 15, Ch. 118, L. 1969; R.C.M. 1947, 66-1827(part).

37-50-311. Certified public accountants — waiver of examination for holders of foreign or out-of-state licenses, certificates, permits, or degrees. The board in its discretion may waive the examination and issue a certificate as a certified public accountant to any person otherwise eligible therefor who is the holder of a certificate, license, or permit as a certified public accountant, then in full force and effect, issued under the laws of any state or is the holder of a certificate, license, or degree in a foreign country constituting a recognized qualification for the practice of public accounting in such country, comparable to that of a certified public accountant in this state, which is then in full force and effect, where the requirements entitling him to practice as such certified public accountant were substantially equivalent to those in force in the state of Montana at the time the certificate was originally issued.

History: En. Sec. 15, Ch. 118, L. 1969; R.C.M. 1947, 66-1827(part); amd. Sec. 9, Ch. 335, L. 1983.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-50-312. Public accountants — waiver of examination for holders of out-of-state license. The board in its discretion may waive the examination and register as a licensed public accountant any person otherwise eligible therefor who is the holder of a license as a licensed public accountant, then in full force and effect, issued under the laws of any state or is the holder of a license or degree in a foreign country constituting a recognized qualification for the practice of public accounting in such country, comparable to that of a licensed public accountant in this state, which is then in full force and effect, where the requirements entitling him to practice as such licensed public accountant were substantially equivalent to those in force in the state of Montana at the time the license was originally issued.

History: En. Sec. 15, Ch. 118, L. 1969; R.C.M. 1947, 66-1827(part); amd. Sec. 10, Ch. 335, L. 1983.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-50-313. Registration of foreign accountants — restriction on title used. The board may in its discretion permit the registration of any person of good moral character who is the holder of a certificate, license, or degree in a foreign country constituting a recognized qualification for the practice of public accounting in such country. A person so registered shall use only the title under which he is generally known in his country, followed by the name of the country from which he received his certificate, license, or degree.

History: En. Sec. 16, Ch. 118, L. 1969; R.C.M. 1947, 66-1828.

37-50-314. Annual permit required — display. (1) No person may engage in the practice of public accounting in this state unless he holds a current annual permit issued by the department. An annual permit to engage in the practice of public accounting in this state shall be issued by the department to a person who holds a current certificate as a certified public accountant or license as a licensed public accountant and complies with the requirements of this chapter.

(2) After the expiration of the 3-year period immediately following the effective date of a board rule establishing continuing education requirements, each application for renewal of a permit by a person who has held his certificate or license for 3 years or more must be accompanied or supported by evidence satisfactory to the board of fulfillment of such requirements during the 3-year period immediately preceding the application.

(3) The board may in its discretion waive the requirement stated in subsection (2) if the applicant agrees to follow a particular program or schedule of continuing education agreeable to the board.

(4) The board may relax or suspend continuing education requirements for an applicant who certifies that he does not intend to engage in the practice of public accounting and for an applicant who cannot fulfill the requirement due to individual hardship.

(5) Subject to subsections (3) and (4), the board may revoke, suspend, or refuse to renew the permit of an applicant who fails to furnish evidence of having met the continuing education requirements established by the board.

(6) The current annual permit to engage in the practice of public accounting must be prominently displayed for public inspection.

History: En. Sec. 21, Ch. 118, L. 1969; amd. Sec. 174, Ch. 350, L. 1974; R.C.M. 1947, 66-1833; amd. Sec. 13, Ch. 684, L. 1979; amd. Sec. 11, Ch. 335, L. 1983.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-50-315. Deposit of moneys collected. Fees and other moneys collected by the department under this chapter shall be deposited in the state special revenue fund for the use of the board.

History: En. Sec. 4, Ch. 118, L. 1969; amd. Sec. 163, Ch. 350, L. 1974; R.C.M. 1947, 66-1816; amd. Sec. 14, Ch. 684, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.

37-50-316. Other license fees prohibited. No certificate, permit, or license fees shall be imposed as a condition upon the practice of public accountancy other than those provided for in this chapter.

History: En. Sec. 30, Ch. 118, L. 1969; R.C.M. 1947, 66-1842; amd. Sec. 12, Ch. 335, L. 1983.

37-50-317. Certificate, license, and permit expiration — renewal fees. (1) Certificates, licenses, and permits issued by the board expire on December 31 of each year.

(2) Certificates and licenses must be renewed by the department upon payment of the annual renewal fee prescribed by the board.

(3) Permits must be renewed by the department upon payment of the annual renewal fee and upon compliance with the continuing education requirements prescribed by the board.

History: **En. Sec. 13, Ch. 335, L. 1983.**

37-50-318 through 37-50-320 reserved.

37-50-321. Revocation and suspension of certificate, license, or permit or refusal to renew permit — recovery of costs. (1) After notice and hearing as provided in 37-50-341, the board may revoke or may suspend any certificate issued under 37-50-302 or any license granted under 37-50-303 or may revoke, suspend, or refuse to renew any permit issued under 37-50-314 or may censure the holder of any such license for any one or any combination of the following causes:

(a) fraud or deceit in obtaining a certificate as certified public accountant or in obtaining a license to practice public accounting under this chapter;

(b) dishonesty, fraud, or gross negligence in the practice of public accounting;

(c) violation of any provisions of this chapter or rules of the board;

(d) conviction of a felony under the laws of any state or of the United States;

(e) conviction of any crime, an element of which is dishonesty or fraud, under the laws of any state or of the United States;

(f) cancellation, revocation, suspension, or refusal to renew authority to practice as a certified public accountant or a public accountant by any other state for any cause other than failure to pay an annual registration fee in such other state;

(g) suspension or revocation of the right to practice before any state or federal agency;

(h) failure to pay the renewal fees prescribed by the board.

(2) The board may, following a final determination resulting in any disciplinary action taken by the board under subsection (1), recover from the disciplined party all reasonable costs of any proceeding incurred for the purposes of that disciplinary action.

History: **En. Sec. 22, Ch. 118, L. 1969; R.C.M. 1947, 66-1834; amd. Sec. 15, Ch. 684, L. 1979; amd. Sec. 14, Ch. 335, L. 1983.**

Cross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

37-50-322. Reinstatement of certificate, license, or permit to practice. On application in writing and after hearing pursuant to notice, the board may authorize the department to:

(1) issue a new certificate, license, or permit;
(2) reinstate a suspended or revoked certificate, license, or permit; or
(3) modify the terms of suspension of a certificate, license, or permit.

History: En. Sec. 25, Ch. 118, L. 1969; amd. Sec. 176, Ch. 350, L. 1974; R.C.M. 1947, 66-1837; amd. Sec. 15, Ch. 335, L. 1983.

37-50-323 through 37-50-330 reserved.

37-50-331. Partnership composed of certified public accountants — registration. (1) A partnership that is or plans to become engaged in this state in the practice of public accounting shall register with the department as a partnership of certified public accountants provided it meets the following requirements:

(a) Each partner or manager personally engaged in this state in the practice of public accounting must be a certified public accountant of some state in good standing and must be certified under this chapter.

(b) Each partner must be a certified public accountant of some state in good standing.

(2) Application for registration must be made on the affidavit of a general partner of the partnership who is a certified public accountant of this state in good standing. The board shall in each case determine whether the applicant is eligible for registration. A partnership which is registered may use the words "certified public accountants" or the abbreviation "CPAs" in connection with its partnership name. Notification shall be given the department within 1 month after the admission to or withdrawal of a partner from a partnership so registered.

History: En. Sec. 17, Ch. 118, L. 1969; amd. Sec. 170, Ch. 350, L. 1974; R.C.M. 1947, 66-1829; amd. Sec. 16, Ch. 684, L. 1979.

Cross-References

Affidavits, Title 26, ch. 1, part 10.

37-50-332. Corporation composed of certified public accountants — registration. (1) A professional service corporation organized for the practice of public accounting must register with the board as a corporation of certified public accountants provided it meets the following requirements:

(a) The sole purpose and business of the corporation must be to furnish to the public services not inconsistent with this chapter or the rules of the board, but the corporation may invest its funds in a manner not incompatible with the practice of public accounting.

(b) Each shareholder of the corporation must be a certified public accountant of some state in good standing and must be principally employed by the corporation or actively engaged in its business. No other person may have any interest in the stock of the corporation. The principal of the corporation and any officer or director having authority over the practice of public accounting by the corporation must be certified public accountants of some state in good standing.

(c) Each shareholder, officer, or manager of the corporation personally engaged within this state in the practice of public accounting as a member thereof must be a certified public accountant of some state in good standing and must be certified under this chapter.

(2) Application for such registration must be made upon the affidavit of a shareholder who holds a permit to practice in this state as a certified public accountant. The board shall determine whether the applicant is eligible for registration. A corporation which is so registered may use the words "certified public accountant" or the abbreviation "CPA" in connection with its corporation name. Notification shall be given the board within 1 month after the admission or withdrawal of a shareholder of a corporation so registered.

History: **En. 66-1829.1 by Sec. 1, Ch. 207, L. 1974; amd. Sec. 11, Ch. 101, L. 1977; R.C.M. 1947, 66-1829.1; amd. Sec. 17, Ch. 684, L. 1979.**

Cross-References

Professional service corporations, Title 35, ch. 4.

37-50-333. Partnership composed of public accountants — registration. (1) A partnership engaged in this state in the practice of public accounting must register with the department as a partnership of licensed public accountants, provided it meets the following requirements:

(a) At least one general partner must be a certified public accountant or a licensed public accountant of this state in good standing and a holder of a permit issued under 37-50-314 which is in effect.

(b) Each partner personally engaged in this state in the practice of public accounting must be a certified public accountant or a licensed public accountant of this state in good standing and a holder of a permit issued under 37-50-314 which is in effect.

(c) Each local manager in charge of an office or a firm in this state must be a certified public accountant or a licensed public accountant of this state in good standing and a holder of a permit issued under 37-50-314 which is in effect.

(2) Application for registration must be made on the affidavit of a general partner of the partnership who holds a permit to practice in this state as a certified public accountant or as a licensed public accountant. The board shall in each case determine whether the applicant is eligible for registration. A partnership which is registered may use the words "public accountants" in connection with its partnership name. Notification shall be given the department within 1 month after the admission to or withdrawal of a partner from a partnership so registered.

History: **En. Sec. 19, Ch. 118, L. 1969; amd. Sec. 172, Ch. 350, L. 1974; R.C.M. 1947, 66-1831; amd. Sec. 18, Ch. 684, L. 1979; amd. Sec. 16, Ch. 335, L. 1983.**

Cross-References

Affidavits, Title 26, ch. 1, part 10.

Partnerships, Title 35, ch. 10.

37-50-334. Corporation composed of public accountants — registration. (1) A professional service corporation organized for the practice of public accounting must register with the board as a corporation of public accountants, provided it meets the following requirements:

(a) The sole purpose and business of the corporation must be to furnish to the public services not inconsistent with this chapter or the rules of the board, but the corporation may invest its funds in a manner not incompatible with the practice of public accounting.

(b) At least one shareholder thereof must be a certified public accountant or public accountant of this state in good standing and must hold a permit issued under 37-50-314 which is in effect.

(c) Each shareholder of the corporation must be a certified public accountant or a licensed public accountant of some state, in good standing, and must be principally employed by the corporation or actively engaged in its business. No other person may have any interest in the stock of the corporation. The principal of the corporation and any officer or director having authority over the practice of public accounting by the corporation must be certified public accountants or public accountants of some state in good standing.

(d) Each shareholder of the corporation personally engaged within this state in the practice of public accounting as a member thereof must be a certified public accountant or a licensed public accountant of this state in good standing and must hold a permit issued under 37-50-314 which is in effect.

(e) In order to facilitate compliance with the provisions of this section relating to the ownership of stock, there must be a written agreement binding the corporation or the qualified shareholders to purchase any shares offered for sale by or not under the ownership or effective control of a qualified shareholder and binding any shareholder not a qualified shareholder to sell such shares to the corporation or the qualified shareholders. The agreement must be noticed on each certificate of corporate stock.

(2) Application for such registration must be made upon the affidavit of a shareholder who holds a permit to practice in this state as a certified public accountant or licensed public accountant. The board shall determine whether the applicant is eligible for registration. A corporation which is so registered may use the words "public accountant" or the abbreviation "PA" in connection with its corporation name. Notification shall be given the board within 1 month after the admission or withdrawal of a shareholder of a corporation so registered.

History: En. 66-1831.1 by Sec. 2, Ch. 207, L. 1974; amd. Sec. 12, Ch. 101, L. 1977; R.C.M. 1947, 66-1831.1; amd. Sec. 19, Ch. 684, L. 1979; amd. Sec. 17, Ch. 335, L. 1983.

Cross-References

Affidavits, Title 26, ch. 1, part 10.

Professional service corporations, Title 35, ch. 4.

37-50-335. Registration of offices. Each office established or maintained in this state for the practice of public accounting in this state by a certified public accountant or a partnership or corporation of certified public accountants or by a licensed public accountant or a partnership or corporation of licensed public accountants or by one registered under 37-50-313 shall be registered annually with the department. A fee may not be charged for this registration. In addition, each individual engaged in this state in the practice of public accounting must have annually received a permit under 37-50-314.

History: En. Sec. 20, Ch. 118, L. 1969; amd. Sec. 3, Ch. 207, L. 1974; amd. Sec. 173, Ch. 350, L. 1974; amd. Sec. 13, Ch. 101, L. 1977; R.C.M. 1947, 66-1832; amd. Sec. 20, Ch. 684, L. 1979; amd. Sec. 18, Ch. 335, L. 1983.

37-50-336. Revocation or suspension of partnership or corporation registration. After notice and hearing as provided in 37-50-341, the board shall revoke the registration of a partnership or corporation if at any time it does not have all the qualifications prescribed by the section of this chapter under which it qualified for registration.

History: En. Sec. 23, Ch. 118, L. 1969; amd. Sec. 4, Ch. 207, L. 1974; R.C.M. 1947, 66-1835.

Cross-References

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

37-50-337 through 37-50-340 reserved.

37-50-341. Initiation of proceedings — hearings and rulemaking. (1) The board may initiate proceedings under this chapter either on its own motion or on the complaint of a person.

(2) Hearings and rulemaking proceedings shall be governed in all respects by the Montana Administrative Procedure Act.

History: En. Sec. 24, Ch. 118, L. 1969; amd. Sec. 175, Ch. 350, L. 1974; R.C.M. 1947, 66-1836.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

37-50-342. Violation. Any person who violates any provision of this chapter or the rules of the board is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $500, by imprisonment in the county jail for not more than 6 months, or by both such fine and imprisonment.

History: En. Sec. 28, Ch. 118, L. 1969; R.C.M. 1947, 66-1840; amd. Sec. 19, Ch. 335, L. 1983.

Part 4

Miscellaneous Provisions

37-50-401. False statements by accountants — misdemeanor — penalty. Any person practicing as an accountant, public accountant, auditor, or certified public accountant in this state who, because of negligence, gross inefficiency, or willfulness, shall issue or permit the issuance of any false statement of the financial transactions, standing, or condition of any corporation, partnership, or individual business undertaking shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than $500 or more than $2,000 or imprisoned for a period of not less than 90 days or more than 1 year or subjected to both said fine and imprisonment, in the discretion of the court.

History: En. Sec. 8, Ch. 46, L. 1933; re-en. Sec. 3241.8, R.C.M. 1935; R.C.M. 1947, 66-1808.

37-50-402. Privileged communications. Except by permission of the client or person or firm or corporation engaging him or the heirs, successors, or personal representatives of such client or person or firm or corporation and except for the expression of opinions on financial statements, no certified public accountant, licensed public accountant, or employee thereof shall be required to nor shall he voluntarily disclose or divulge information of which he may have become possessed relative to and in connection with any professional services as a public accountant. The information derived from or as a result of such professional services shall be deemed confidential and privileged. The provisions of this section shall not apply to the testimony or documents of a public accountant furnished pursuant to a subpoena in a court of competent jurisdiction or a board proceeding.

History: En. Sec. 29, Ch. 118, L. 1969; R.C.M. 1947, 66-1841; amd. Sec. 20, Ch. 335, L. 1983.

Cross-References

Evidence — privileges, Title 26, ch. 1, part 8.

CHAPTER 51

REAL ESTATE BROKERS AND SALESMEN

Part 1 — General

37-51-101. Repealed.
37-51-102. Definitions.
37-51-103. Exemptions.
37-51-104. Chapter supplemental to deceptive practices law.

Part 2 — Board of Realty Regulation

37-51-201. Chairman — seal — records — prohibition on membership in real estate associations.
37-51-202. General licensing power.
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Part 4 — Miscellaneous Provisions

37-51-401. Action for compensation limited to licensed broker or salesman.

Part 5 — Recovery Account

37-51-501. Real estate recovery account established — minimum balance — interest.
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37-51-507. Payment from account.
37-51-508. Limitation of payment — pro rata distribution.

37-51-509. Claims satisfied in order of filing.
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Chapter Cross-References

Licensed broker — exemption from regulation of escrow business, 32-7-103.

Part 1

General

37-51-101. Repealed. Sec. 14, Ch. 497, L. 1979.

History: En. Sec. 1, Ch. 250, L. 1963; amd. Sec. 1, Ch. 261, L. 1969; amd. Sec. 177, Ch. 350, L. 1974; R.C.M. 1947, 66-1924(1).

37-51-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Account" means the real estate recovery account established in 37-51-501.

(2) "Board" means the board of realty regulation provided for in 2-15-1867.

(3) "Broker" includes an individual who:

(a) for another or for valuable consideration or who with the intent or expectation of receiving valuable consideration negotiates or attempts to negotiate the listing, sale, purchase, rental, exchange, or lease of real estate or of the improvements on real estate or collects rents or attempts to collect rents;

(b) is employed by or on behalf of the owner or lessor of real estate to conduct the sale, leasing, subleasing, or other disposition of real estate for consideration;

(c) engages in the business of charging an advance fee or contracting for collection of a fee in connection with a contract by which he undertakes primarily to promote the sale, lease, or other disposition of real estate in this state through its listing in a publication issued primarily for this purpose or for referral of information concerning real estate to brokers;

(d) makes the advertising, sale, lease, or other real estate information available by public display to potential buyers and who aids, attempts, or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease;

(e) aids or attempts or offers to aid, for a fee, any person in locating or obtaining any real estate for purchase or lease; or

(f) advertises or holds himself out as engaged in any of the activities referred to in subsections (3)(a) through (3)(e).

(4) "Broker associate" means a broker who associates with a broker owner and does not own an interest in a real estate firm.

(5) "Broker owner" means a broker who owns or has a financial interest in a real estate firm.

(6) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(7) "Franchise agreement" means a contract or agreement by which:

(a) a franchisee is granted the right to engage in business under a marketing plan prescribed in substantial part by the franchisor;

(b) the operation of the franchisee's business is substantially associated with the franchisor's trademark, trade name, logotype, or other commercial symbol or advertising designating the franchisor; and

(c) the franchisee is required to pay, directly or indirectly, a fee for the right to operate under the agreement.

(8) "Person" includes individuals, partnerships, associations, and corporations, foreign and domestic, except that when referring to a person licensed under this chapter, it means an individual.

(9) "Real estate" includes leaseholds as well as any other interest or estate in land, whether corporeal, incorporeal, freehold, or nonfreehold and whether the real estate is situated in this state or elsewhere.

(10) "Salesman" includes an individual who for a salary, commission, or compensation of any kind is associated, either directly, indirectly, regularly, or occasionally, with a real estate broker to sell, purchase, or negotiate for the sale, purchase, exchange, or renting of real estate.

History: En. Sec. 2, Ch. 250, L. 1963; amd. Sec. 2, Ch. 261, L. 1969; amd. Sec. 178, Ch. 350, L. 1974; amd. Sec. 1, Ch. 133, L. 1975; R.C.M. 1947, 66-1925; amd. Sec. 1, Ch. 188, L. 1979; amd. Sec. 1, Ch. 306, L. 1979; amd. Sec. 3, Ch. 497, L. 1979; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 688, L. 1985; amd. Sec. 1, Ch. 314, L. 1989.

Compiler's Comments

1989 Amendment: Throughout (3) made minor changes in grammar, phraseology, and style; in (3)(a), before first occurrence of "valuable consideration", deleted "a fee, commission, or other"; in (3)(b) substituted "disposition of real estate for consideration" for "disposition thereof at a salary or a fee, commission, or any other consideration"; in (3)(d), at beginning, inserted "makes the advertising, sale, lease, or other real estate information available by public display to potential buyers"; and inserted (3)(e) relating to locating or obtaining real estate.

Cross-References

Real property defined, 70-15-101.

37-51-103. Exemptions. (1) An act performed for compensation of any kind in the buying, selling, exchanging, leasing, or renting of real estate or in negotiating therefor for others, except as specified in this section, shall constitute the person performing any of the acts a real estate broker or real estate salesman. The provisions of this chapter may not:

(a) apply to any person who, as owner or lessor, shall perform any acts listed in subsection (1) with reference to property owned or leased by himself or to an auctioneer employed by the owner or lessor to aid and assist in conducting a public sale held by the owner or lessor;

(b) apply to any person acting as attorney-in-fact under a duly executed special or general power of attorney from the owner of any real estate authorizing the purchase, sale, exchange, renting, or leasing of any real estate, unless the person acting as attorney-in-fact does so regularly or consistently for a person or persons, for or with the expectation of receiving a fee, commission, or other valuable consideration in conjunction with a business or for the purpose of avoiding license requirements;

(c) be construed to include in any way the services rendered by any attorney at law in the performance of his duty as an attorney at law;

(d) apply to any person duly appointed by a court for purpose of evaluation or appraising an estate in a probate matter;

(e) be held to include, while acting as such, a receiver, a trustee in bankruptcy, an administrator or executor, any person selling real estate under order of any court, a trustee under a trust agreement, deed of trust, or will, or an auctioneer employed by a receiver, trustee in bankruptcy, administrator, executor, or trustee to aid and assist in conducting a public sale held by the officer;

(f) apply to public officials in the conduct of their official duties;

(g) apply to any person, partnership, association, or corporation, foreign or domestic, performing any act with respect to prospecting, leasing, drilling, or operating land for hydrocarbons and hard minerals or disposing of any hydrocarbons, hard minerals, or mining rights therein, whether upon a royalty basis or otherwise; or

(h) apply to persons acting as managers of housing complexes for low-income persons, which are subsidized, directly or indirectly, by this state or an agency or subdivision thereof or by the government of the United States or an agency thereof.

(2) The provisions of this chapter do not apply to a newspaper or other publication of general circulation or to a radio or television station engaged in the normal course of business.

History: En. Sec. 3, Ch. 250, L. 1963; amd. Sec. 1, Ch. 385, L. 1977; R.C.M. 1947, 66-1926; amd. Sec. 1, Ch. 180, L. 1989; amd. Sec. 2, Ch. 314, L. 1989.

Compiler's Comments

1989 Amendments: Chapter 180, in (1)(b), after "executed", inserted "special or general", after "authorizing the" deleted "final consummation of any contract for the", and after "real estate" inserted language clarifying that attorney-in-fact exemption from licensing requirement does not apply to a person who regularly, consistently, or for commission or consideration participates in a real estate transaction for another in conjunction with business or to avoid licensing requirements.

Chapter 314 near beginning of (1), before "compensation", deleted "a commission or"; inserted (2) excepting general circulation print and broadcast media; and made minor changes in grammar and style.

37-51-104. Chapter supplemental to deceptive practices law. Nothing contained herein may be construed to amend or modify 45-6-317 or 45-6-318. This chapter shall be construed to be supplemental to 45-6-317 and 45-6-318.

History: En. Sec. 25, Ch. 250, L. 1963; amd. Sec. 16, Ch. 101, L. 1977; R.C.M. 1947, 66-1946.

Part 2

Board of Realty Regulation

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1867.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-51-201. Chairman — seal — records — prohibition on membership in real estate associations. (1) The members of the board shall elect a chairman from among their number.

(2) The board shall adopt a seal of a design as it shall prescribe. Copies of records and papers kept by the department, certified by the chairman and authenticated by the seal of the board, shall be received in evidence in courts

with like effect as the original. Records of the board are open to public inspection under rules it prescribes.

(3) The department shall keep a record of proceedings, transactions, communications, and official acts of the board; be custodian of the records of the board; and cause to be performed other duties as the board, on the written request of two or more members of the board or at other times as the chairman in his discretion, considers necessary.

(4) Neither the chairman nor an employee of the department hired to provide services to the board may be an officer or paid employee of any real estate association or group of real estate dealers or brokers.

History: (1)En. 66-1927.1 by Sec. 2, Ch. 378, L. 1977; Sec. 66-1927.1, R.C.M. 1947; (2) thru (4)En. Sec. 4, Ch. 250, L. 1963; amd. Sec. 179, Ch. 350, L. 1974; amd. Sec. 36, Ch. 439, L. 1975; Sec. 66-1927, R.C.M. 1947; R.C.M. 1947, 66-1927(2), (4), 66-1927.1.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

Public records, Title 2, ch. 6.

Entries in official books and records prima facie evidence, 26-1-605.

Entry made by officer or Board prima facie evidence, 26-1-606.

Requirement of authentication or identification, Rule 901, Montana Rules of Evidence (see Title 26, ch. 10).

Self-authentication, Rule 902, Montana Rules of Evidence (see Title 26, ch. 10).

Public records, Rule 1005, Montana Rules of Evidence (see Title 26, ch. 10).

Duties of Department, 37-1-101.

37-51-202. General licensing power. The board may regulate the issuance of licenses and revoke or suspend licenses issued under this chapter.

History: En. Sec. 8, Ch. 250, L. 1963; amd. Sec. 182, Ch. 350, L. 1974; R.C.M. 1947, 66-1931.

37-51-203. Rulemaking power. The board shall from time to time adopt rules to carry out the provisions of this chapter.

History: En. Sec. 4, Ch. 250, L. 1963; amd. Sec. 179, Ch. 350, L. 1974; amd. Sec. 36, Ch. 439, L. 1975; R.C.M. 1947, 66-1927(1).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-51-204. Educational programs and continuing education. (1) The board may, subject to 37-1-101, conduct, hold, or assist in conducting or holding real estate clinics, meetings, courses, or institutes and incur necessary expenses in this connection.

(2) The board may assist libraries and educational institutions in sponsoring studies and programs for the purpose of raising the standards of the real estate business and the competency of licensees.

(3) The board may prescribe by rule continuing education requirements for all licensees, not to exceed 15 classroom or equivalent hours in any 2-year period, including proof of conformance, but except as provided in 37-51-302 the board may not require examination of licensees.

History: En. Sec. 20, Ch. 250, L. 1963; amd. Sec. 190, Ch. 350, L. 1974; R.C.M. 1947, 66-1943; amd. Sec. 1, Ch. 269, L. 1985.

37-51-205. Compensation of members — expenses. Each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 4, Ch. 250, L. 1963; amd. Sec. 179, Ch. 350, L. 1974; amd. Sec. 36, Ch. 439, L. 1975; R.C.M. 1947, 66-1927(3); amd. Sec. 4, Ch. 497, L. 1979; amd. Sec. 29, Ch. 474, L. 1981.

37-51-206. Attorney general to act as attorney for the board. The attorney general shall act as attorney for the board in actions and proceedings brought by or against it under this chapter. Fees and expenses of the attorney general acting in this capacity shall be paid out of board moneys in the state special revenue fund.

History: En. Sec. 21, Ch. 250, L. 1963; amd. Sec. 191, Ch. 350, L. 1974; R.C.M. 1947, 66-1944; amd. Sec. 1, Ch. 277, L. 1983.

Cross-References

Duties of Attorney General, 2-15-501.

37-51-207. Schedule of fees. The board shall adopt a schedule of fees to be charged by the department and to be paid into the state special revenue fund for the use of the board. The fees charged must be reasonably related to the cost incurred in regulating the real estate industry.

History: En. Sec. 5, Ch. 497, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-51-208. Deposit of money not otherwise provided for. Whenever money is received by the board or by the department for the use of the board and there is no provision for the disposition or deposit of the money, the money is to be deposited in the state special revenue fund for the use of the board.

History: En. Sec. 1, Ch. 515, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-51-301. License required — limited to persons. (1) It is unlawful for a person to engage in or conduct, directly or indirectly, or to advertise or hold himself out as engaging in or conducting the business or acting in the capacity of a real estate broker or a real estate salesman within this state without a license as a broker or salesman or otherwise complying with this chapter.

(2) Corporations, partnerships, and associations may not be licensed under this chapter. A corporation or a partnership may act as a licensee if every corporate officer and every partner performing the functions of a licensee is licensed under this chapter. All officers of a corporation or all members of a partnership acting as a licensee are in violation of this chapter unless there is full compliance with this subsection.

History: En. Sec. 1, Ch. 250, L. 1963; amd. Sec. 1, Ch. 261, L. 1969; amd. Sec. 177, Ch. 350, L. 1974; R.C.M. 1947, 66-1924(2), (3); amd. Sec. 93, Ch. 370, L. 1987; amd. Sec. 1, Ch. 259, L. 1989.

Compiler's Comments

1989 Amendment: Throughout (2) substituted "licensee" for "real estate broker" or "broker"; and made minor changes in phraseology.

Cross-References

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

37-51-302. Broker or salesman license — qualifications of applicant. (1) Licenses may be granted only to individuals considered by the board to be of good repute and competent to transact the business of a broker or salesman in a manner as to safeguard the interests of the public.

(2) An applicant for a broker's license shall:

(a) be at least 18 years of age;

(b) have graduated from an accredited high school or completed an equivalent education as determined by the board;

(c) have been actively engaged as a licensed real estate salesman for a period of 2 years or have had experience or special education equivalent to that which a licensed real estate salesman ordinarily would receive during this 2-year period as determined by the board, except that if the board finds that an applicant could not obtain employment as a licensed real estate salesman because of conditions existing in the area where he resides, the board may waive this experience requirement;

(d) file an application for license with the department; and

(e) furnish written evidence that he has completed 60 classroom or equivalent hours (in addition to those required to secure a salesman's license) in a course of study approved by the board and taught by instructors approved by the board and has satisfactorily passed an examination dealing with the material taught in each course. The course of study must include the subjects of real estate principles, real estate law, real estate finance, and related topics.

(3) The board shall require information it considers necessary from an applicant to determine his honesty, trustworthiness, and competency.

(4) (a) An applicant for a salesman's license shall:

(i) be at least 18 years of age;

(ii) have received credit for completion of 2 years of full curriculum study at an accredited high school or completed an equivalent education as determined by the board;

(iii) file an application for license with the department; and

(iv) furnish written evidence that he has completed 60 classroom or equivalent hours in a course of study approved by the board and taught by instructors approved by the board and has satisfactorily passed an examination dealing with the material taught in each course. The course of study must include the subjects of real estate principles, real estate law and ethics, real estate finance, and related topics.

(b) His application shall be accompanied by the recommendation of the licensed broker by whom the applicant will be employed or placed under contract, certifying that the applicant is of good repute and that the broker will actively supervise and train the applicant during the period the requested license remains in effect.

(5) The department shall issue to each licensed broker and to each licensed salesman a license and a pocket card in a form and size as the board prescribes.

(6) A broker's license must indicate whether the broker is a broker owner or a broker associate.

History: En. Sec. 6, Ch. 250, L. 1963; amd. Sec. 3, Ch. 261, L. 1969; amd. Sec. 10, Ch. 423, L. 1971; amd. Sec. 180, Ch. 350, L. 1974; R.C.M. 1947, 66-1929; amd. Sec. 2, Ch. 306, L. 1979; amd. Sec. 7, Ch. 341, L. 1981; amd. Sec. 2, Ch. 269, L. 1985.

Cross-References

Reporting disciplinary actions against licensees, 37-1-105.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-51-303. Broker or salesman examination. (1) In addition to proof of honesty, trustworthiness, and good reputation, an applicant whose application is then pending shall satisfactorily pass a written examination prepared by or under the supervision of the board. The examination shall be given at least once each 6 months and at places within the state the board prescribes.

(2) (a) The examination for a salesman's license shall include:

(i) business ethics, writing, composition, arithmetic, elementary principles of land economics and appraisal;

(ii) a general knowledge of the statutes of this state relating to deeds, mortgages, contracts of sale, agency, brokerage, and of this chapter.

(b) If the applicant passes one subject portion of the examination, (2)(a)(i) or (2)(a)(ii), he shall not be required to repeat that portion of the examination if he passes the remaining portion within 12 months.

(3) The examination for a broker's license shall be of a more exacting nature and scope and more stringent than the examination for a salesman's license.

History: En. Sec. 7, Ch. 250, L. 1963; amd. Sec. 181, Ch. 350, L. 1974; R.C.M. 1947, 66-1930; amd. Sec. 1, Ch. 595, L. 1981.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

37-51-304. Repealed. Sec. 15, Ch. 688, L. 1985.

History: En. Sec. 10, Ch. 250, L. 1963; amd. Sec. 4, Ch. 261, L. 1969; amd. Sec. 184, Ch. 350, L. 1974; amd. Sec. 15, Ch. 101, L. 1977; R.C.M. 1947, 66-1933.

37-51-305. License — form — delivery — display — pocket card. (1) The board shall prescribe the form of license. A license shall bear the seal of the board.

(2) The license of a real estate salesman shall be delivered or mailed to the real estate broker with whom the real estate salesman is associated and shall be kept in the custody and control of the broker.

(3) A broker shall display his own license conspicuously in his place of business.

(4) The department shall annually prepare and deliver a pocket card certifying that the person whose name appears is a registered real estate broker or a registered real estate salesman, stating the period for which fees have been paid and, on real estate salesman's cards only, the name and address of the broker with whom he is associated.

History: En. Sec. 9, Ch. 250, L. 1963; amd. Sec. 183, Ch. 350, L. 1974; R.C.M. 1947, 66-1932; amd. Sec. 3, Ch. 306, L. 1979.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Jurisdiction of persons, Rule 4B, M.R.Civ.P. (see Title 25, ch. 20).

37-51-306. Transactions with nonresidents and with nonlicensed brokers or salesmen — reciprocity — consent to legal process. (1) It is unlawful for a licensed broker to employ or compensate, directly or indirectly, a person for performing the acts regulated by this chapter who is not a licensed broker or licensed salesman. However, a licensed broker may pay a commission to a licensed broker of another state if the nonresident broker has not conducted and does not conduct in this state a service for which a fee, compensation, or commission is paid. This subsection does not limit the next subsection.

(2) A nonresident of this state actively engaged in the real estate business who maintains a place of business in another state and who has been licensed in the other state to conduct this business in that state may obtain a license as a broker in this state by complying with this chapter. However, this section applies only to brokers of those other states which offer the same privileges to the licensed brokers of this state. The nonresident licensee need not maintain a place of business in this state. The board may authorize the department to license a nonresident broker without examination if he files with the department an authorized or certified copy of the license issued to the nonresident for conducting this business in another state and pays to the department the same license fee as is required for obtaining a broker's license in this state. The board may in its discretion refuse to authorize the department to issue a broker's license to an applicant who is not a resident of this state.

(3) A nonresident broker shall file an irrevocable written consent that legal actions arising out of a commenced or completed transaction may be commenced against the nonresident broker in a county of this state which may be appropriate and designated by Title 25, chapter 2, part 1. The consent shall provide that service of summons in this action may be served on the department for and on behalf of the nonresident broker, and this service is sufficient to give the court jurisdiction over the nonresident broker and his salesman or agent conducting a transaction in a county. The consent shall be acknowledged and, if made by a corporation, shall be authenticated by its seal.

History: En. Sec. 13, Ch. 250, L. 1963; amd. Sec. 187, Ch. 350, L. 1974; R.C.M. 1947, 66-1936.

Cross-References

Rules for determining residency, 1-1-215.

Prohibition on distribution or sale of mailing lists, 2-6-109.

37-51-307. Directory of licensees. The department shall annually publish a directory of licensees, including a list of licenses suspended and revoked, which shall contain such other data the board determines to be in the interest of real estate licensees and the public.

History: En. Sec. 22, Ch. 250, L. 1963; amd. Sec. 192, Ch. 350, L. 1974; R.C.M. 1947, 66-1945.

Cross-References

Prohibition on distribution or sale of mailing lists, 2-6-109.

37-51-308. Broker's office — notice to department of change of address. (1) A resident licensed broker shall maintain a fixed office in this state. The original license of the broker and the original license of each salesman associated or under contract with the broker shall be prominently displayed in the office. The address of the office and any branch office shall be designated on the broker's license.

(2) In case of removal from the designated address, the licensee shall notify the department before removal or within 10 days thereafter, designating the new location of this office and paying the required fee, whereupon a license for the new location must be issued for the unexpired period.

History: En. Sec. 12, Ch. 250, L. 1963; amd. Sec. 186, Ch. 350, L. 1974; R.C.M. 1947, 66-1935(1); amd. Sec. 21, Ch. 22, L. 1979; amd. Sec. 4, Ch. 306, L. 1979.

37-51-309. Broker owner — broker associate — salesman — notice to department of change of association. (1) A salesman may not be associated with or under contract to more than one licensed broker owner, nor may he perform services for a broker other than the one designated on the license issued to the salesman.

(2) When a licensed salesman desires to change his association or contractual relationship from one licensed broker to another, he shall notify the department promptly in writing of these facts, pay the required fee, and return his license and pocket card, and a new license and pocket card shall be issued. No salesman shall directly or indirectly work for or with a broker owner until he has been issued a license to work for or with that broker owner. On termination of a salesman's association or contractual relationship, he shall surrender his license and pocket card to his broker owner who shall return them to the department for cancellation.

(3) Only one license shall be issued to a salesman to be in effect at one time.

(4) A broker associate may not be associated with more than one broker owner.

History: En. Sec. 12, Ch. 250, L. 1963; amd. Sec. 186, Ch. 350, L. 1974; R.C.M. 1947, 66-1935(2), (3); amd. Sec. 5, Ch. 306, L. 1979.

37-51-310. Annual renewal. (1) Except as provided in subsection (2), annual fees are due and payable for the ensuing year during the month of December of each year. Failure to remit annual fees before January 1 automatically cancels the license, but otherwise the license remains in effect continuously from the date of issuance unless suspended or revoked by the board for just cause.

(2) The board may by rule change the annual renewal and automatic cancellation dates provided for in subsection (1).

(3) A licensee who allows his license to lapse by failing to remit the annual fees before January 1 may have his license reinstated by the board by:

(a) within 45 days after January 1, providing a satisfactory explanation to the board for his failure to renew the license; and

(b) paying the current renewal fee prescribed by the board.

(4) The board may also charge a late fee equal to twice the current renewal fee, but no less than $100, to a licensee who does not renew his license as required by subsection (1).

History: En. Sec. 11, Ch. 250, L. 1963; amd. Sec. 185, Ch. 350, L. 1974; amd. Sec. 13, Ch. 533, L. 1977; R.C.M. 1947, 66-1934(3); amd. Sec. 1, Ch. 275, L. 1985; amd. Sec. 1, Ch. 306, L. 1987.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-51-311. Fees — deposit of fees. (1) The fees prescribed by the board shall be charged by the department and paid into the state special revenue fund for the use of the board, subject to 37-1-101(6).

(2) The board shall charge an annual fee from a licensee who wishes to be placed in an inactive status. A licensee who is placed in an inactive status by the board and who has paid the required fee need not pay any fee assessed by the board for the purpose of funding the real estate recovery account during the period the licensee remains in inactive status.

History: En. Sec. 11, Ch. 250, L. 1963; amd. Sec. 185, Ch. 350, L. 1974; amd. Sec. 13, Ch. 533, L. 1977; R.C.M. 1947, 66-1934(1), (2); amd. Sec. 6, Ch. 306, L. 1979; amd. Sec. 65, Ch. 345, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 688, L. 1985.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Recovery account assessment fee, 37-51-502.

37-51-312. No taxation by municipality. No license fee or tax may be imposed on a real estate broker or salesman by a municipality or any other political subdivision of the state.

History: En. Sec. 11, Ch. 250, L. 1963; amd. Sec. 185, Ch. 350, L. 1974; amd. Sec. 13, Ch. 533, L. 1977; R.C.M. 1947, 66-1934(4).

37-51-313 through 37-51-320 reserved.

37-51-321. Revocation or suspension of license — initiation of proceedings — grounds. The board may on its own motion and shall on the sworn complaint in writing of a person investigate the actions of a real estate broker or a real estate salesman, subject to 37-1-101 and 37-1-121, and may revoke or suspend a license issued under this chapter when the broker or salesman has been found guilty by a majority of the board of any of the following practices:

(1) intentionally misleading, untruthful, or inaccurate advertising, whether printed or by radio, display, or other nature, which advertising in any material particular or in any material way misrepresents any property, terms, values, policies, or services of the business conducted. A broker who operates under a franchise agreement engages in misleading, untruthful, or inaccurate advertising if in using the franchise name he does not incorporate his own name in the franchise name or logotype or does not conspicuously display, on his letterhead and other printed materials available to the public, a statement that his office is independently owned and operated. The board may not adopt advertising standards more stringent than those set forth in this subsection.

(2) making any false promises of a character likely to influence, persuade, or induce;

(3) pursuing a continued and flagrant course of misrepresentation or making false promises through agents or salesmen or any medium of advertising or otherwise;

(4) use of the term "realtor" by a person not authorized to do so or using another trade name or insignia of membership in a real estate organization of which the licensee is not a member;

(5) failing to account for or to remit money coming into his possession belonging to others;

(6) accepting, giving, or charging an undisclosed commission, rebate, or profit on expenditures made for a principal;

(7) acting in a dual capacity of broker and undisclosed principal in a transaction;

(8) guaranteeing, authorizing, or permitting a person to guarantee future profits which may result from the resale of real property;

(9) offering real property for sale or lease without the knowledge and consent of the owner or his authorized agent or on terms other than those authorized by the owner or his authorized agent;

(10) inducing a party to a contract of sale or lease to break the contract for the purpose of substituting a new contract with another principal;

(11) accepting employment or compensation for appraising real property contingent on the reporting of a predetermined value or issuing an appraisal report on real property in which he has an undisclosed interest;

(12) negotiating a sale, exchange, or lease of real property directly with an owner or lessee if he knows that the owner has a written, outstanding contract in connection with the property granting an exclusive agency to another broker;

(13) soliciting, selling, or offering for sale real property by conducting lotteries for the purpose of influencing a purchaser or prospective purchaser of real property;

(14) representing or attempting to represent a real estate broker other than the employer without the express knowledge or consent of the employer;

(15) failing voluntarily to furnish a copy of a written instrument to a party executing it at the time of its execution;

(16) paying a commission in connection with a real estate sale or transaction to a person who is not licensed as a real estate broker or real estate salesman under this chapter;

(17) intentionally violating a rule adopted by the board in the interests of the public and in conformity with this chapter;

(18) failing, if a salesman, to place, as soon after receipt as is practicably possible, in the custody of his registered broker, deposit money or other money entrusted to him as salesman by a person;

(19) demonstrating his unworthiness or incompetency to act as a broker or salesman; or

(20) conviction of a felony.

History: En. Sec. 14, Ch. 250, L. 1963; amd. Sec. 5, Ch. 261, L. 1969; amd. Sec. 188, Ch. 350, L. 1974; R.C.M. 1947, 66-1937; amd. Sec. 2, Ch. 188, L. 1979.

Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of Director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-51-322. Right to notice and hearing. When the board has investigated an application for a real estate broker's or salesman's license or, subject to 37-1-101 and 37-1-121, investigated the actions of a real estate broker or salesman on the sworn complaint in writing of a person or on its own motion and the investigation has revealed reasonable grounds for denying the application or reasonable indication of a violation of this chapter as cause for revoking or suspending a license issued to a real estate broker or salesman, the board shall, before denying the application or revoking or suspending the license, give notice and set the matter for hearing.

History: En. Sec. 8, Ch. 261, L. 1969; amd. Sec. 189, Ch. 350, L. 1974; R.C.M. 1947, 66-1938.1.

Cross-References

Contested case as including licensing, 2-4-102.

Contested case procedure, Title 2, ch. 4, part 6.

37-51-323. Penalties — criminal — civil. (1) Any individual acting as a broker or salesman without a license or while his license is suspended or revoked or any person who violates any provision of this chapter shall be guilty of a misdemeanor and upon conviction thereof by a district court of this state shall be punishable by a fine of not less than $100 or more than $500 or by imprisonment for a term not to exceed 90 days, or both. Upon conviction of a second or subsequent violation, the person shall be punishable by a fine of not less than $500 or more than $2,000 or by imprisonment for a term not to exceed 6 months, or both.

(2) In case any person in a civil action is found guilty of having received any money or the equivalent thereof as a fee, commission, compensation, or profit by or in consequence of a violation of any provision of this chapter, he shall in addition be liable to a penalty of not less than the amount of the sum of money so received and not more than three times the sum so received, as may be determined by the court, which penalty may be recovered in any court of competent jurisdiction by any person aggrieved.

History: En. Sec. 17, Ch. 250, L. 1963; amd. Sec. 6, Ch. 261, L. 1969; amd. Sec. 1, Ch. 541, L. 1977; R.C.M. 1947, 66-1940.

Part 4

Miscellaneous Provisions

37-51-401. Action for compensation limited to licensed broker or salesman. Any person engaged in the business of or acting in the capacity of a real estate broker or real estate salesman within this state shall not be permitted to bring or maintain any action in the courts for the collection of compensation for the sale or lease or otherwise disposing of real estate without first alleging and proving that such person was a duly licensed real estate broker or real estate salesman or authorized to act as a broker under the provisions of this chapter at the time the alleged cause of action or claim arose.

History: En. Sec. 18, Ch. 250, L. 1963; amd. Sec. 7, Ch. 261, L. 1969; R.C.M. 1947, 66-1941.

Part 5

Recovery Account

37-51-501. Real estate recovery account established — minimum balance — interest. (1) There is established in the state special revenue fund for the use of the board a real estate recovery account. The account is used to provide payment of claims based on unsatisfied judgments against persons licensed under the provisions of this chapter. The real estate recovery account is statutorily appropriated as provided in 17-7-502.

(2) The board shall maintain a minimum balance of $100,000 in the account. The board may in its discretion transfer any money in excess of that amount from the account to the state special revenue fund for the use of the board in accordance with the purposes provided in 37-51-204.

(3) Money earned on the investment of funds in the account must be credited to the account annually.

History: En. Sec. 3, Ch. 688, L. 1985.

37-51-502. Initial licensure and additional assessment. (1) A person initially licensed under the provisions of this chapter in 1986 or thereafter shall, in addition to paying any license fee required under this chapter, be assessed the sum of $35 at the time of licensure, to be credited to the real estate recovery account.

(2) If at any time the balance in the real estate recovery account is less than $100,000, every person licensed under this chapter may be assessed a sum, which sum is determined by the board to be sufficient to maintain the balance of the account at a minimum of $100,000.

History: En. Sec. 4, Ch. 688, L. 1985.

37-51-503. Claims against fund — orders for payment. (1) Whenever a person obtains a final judgment in any court of competent jurisdiction against any person licensed under this chapter for the conversion of trust funds or arising directly out of any act or transaction occurring on or after July 1, 1985, for which a license is required under this chapter, he may after executing on such final judgment file an application, in accordance with this section and 37-51-504, with the board for an order directing payment out of the account for any actual and direct loss unpaid on the judgment.

(2) No application or order for payment from the account may be made for:

(a) a judgment which has been satisfied;

(b) any amount in excess of $25,000 for any one licensee, regardless of the number of persons injured by acts of the licensee or number of parcels of real estate involved in the transaction or transactions;

(c) attorney fees and exemplary or punitive damages; or

(d) amounts remaining unpaid on any final judgment entered more than 2 years prior to the date of application.

(3) The application must be:

(a) served by certified mail, return receipt requested, upon the board, the licensee, and any other party to the transaction referred to in the application; and

(b) filed with the board along with an affidavit of service.

History: En. Sec. 5, Ch. 688, L. 1985.

Cross-References

Execution of judgment, Title 25, ch. 13.

Proceedings in aid of execution, Title 25, ch. 14.

37-51-504. Form of application. The person making application for payment from the account must show in the application:

(1) that he is not the spouse of the judgment debtor or the personal representative of such spouse;

(2) that he has obtained a judgment which satisfies the requirements of 37-51-503, stating the amount of the judgment and the amount unpaid on the date of the application;

(3) that he has, on the dates and at the times shown by the applicant, diligently pursued the remedies of execution and proceedings in aid of execution provided in Title 25, chapters 13 and 14, respectively;

(4) the amount of any money obtained as a result of the proceedings required to be shown in subsection (3) and the balance of the judgment remaining unpaid for which application is made; and

(5) that he has diligently pursued his remedies of execution and proceedings in aid of execution against any other person against whom he has a judgment as a result of the transaction for which he seeks recovery from the account.

History: **En. Sec. 6, Ch. 688, L. 1985.**

37-51-505. Motion to dismiss application. The licensee may request the board at any time to dismiss the application if it appears that the application is without merit. The motion may be supported by the affidavit of any person having knowledge of the facts and may be made on the basis that the application and the judgment referred to therein do not form the basis for a payable claim under 37-51-503 and 37-51-504. The board shall give the applicant at least 10 days' written notice of any motion to dismiss.

History: **En. Sec. 7, Ch. 688, L. 1985.**

37-51-506. Hearing on application. (1) Within 30 days of the filing of the affidavit of service, the board shall conduct a hearing upon the application. Upon the motion of either party, the board may continue the hearing up to 60 days and upon a showing of good cause may continue the hearing such further period as the board considers appropriate.

(2) At the hearing the board shall determine by a preponderance of the evidence the truth of any allegations made in the application and supporting documents that are challenged by the licensee.

History: **En. Sec. 8, Ch. 688, L. 1985.**

37-51-507. Payment from account. If the board finds after the hearing that an applicant has proved a valid claim against the account, the board shall enter an order requiring payment from the account of whatever sum it finds to be due under the provisions of this part.

History: **En. Sec. 9, Ch. 688, L. 1985.**

37-51-508. Limitation of payment — pro rata distribution. (1) The liability of the account may not exceed $25,000 for any one licensee until that licensee has repaid the account. If the $25,000 liability of the account is insufficient to pay in full the valid claims of all applications that have been filed against any one licensee and ordered to be paid, the $25,000 must be distributed among those claimants in the ratio that the amount ordered to be paid to any one claimant bears to the total amounts ordered to be paid or in such other manner as the board considers equitable; and upon such a distribution, all claims are considered satisfied by the amount so distributed.

Distribution of such money must, at any time, be among the persons ordered to receive the same, without regard to the order or priority in which their respective judgments were obtained or their applications filed.

(2) Upon petition of any person, the board may require all existing applications for payment of claims against one licensee to be joined in one proceeding for the purpose of a timely determination of their respective rights to the money in the account.

(3) An application for payment of a claim against a licensee filed after the distribution of the full amount for which the account is liable for that licensee must be denied by the board.

History: **En. Sec. 10, Ch. 688, L. 1985.**

37-51-509. Claims satisfied in order of filing. If account funds are insufficient to satisfy any claim or portion of a claim ordered to be paid on behalf of a licensee for whom the account liability of $25,000 has not been exceeded, the board shall, when sufficient money has been deposited in the account, satisfy such unpaid claims or portions of them in the order that the applications for such claims were originally filed pursuant to 37-51-503. The board shall pay accumulated interest beginning on the date of the order to pay at the judgment rate on each such unpaid claim.

History: **En. Sec. 11, Ch. 688, L. 1985.**

37-51-510. Deposits by board. Money received by the board under 37-51-511 must be deposited in the account and allocated exclusively for the purposes provided in this part.

History: **En. Sec. 12, Ch. 688, L. 1985.**

37-51-511. Subrogation rights of board. Upon payment of money from the account, the board is subrogated to all of the rights of the judgment creditor to the extent of the amount so paid and the judgment creditor is considered to have assigned to the board all of his right, title, and interest in the judgment to the extent of the amount paid from the account. Any amount and interest recovered by the board on the judgment must be deposited in the account.

History: **En. Sec. 13, Ch. 688, L. 1985.**

37-51-512. Other disciplinary powers unimpaired — effect of repayment to fund. Nothing contained in this part limits the authority of the board to take disciplinary action against any licensee under other provisions of this chapter, nor does the repayment in full of all obligations to the account by any licensee nullify or modify the effect of any other disciplinary action taken by the board under the provisions of this chapter.

History: **En. Sec. 14, Ch. 688, L. 1985.**

CHAPTER 52

TITLE ABSTRACTERS
(Repealed. Sec. 195, Ch. 575, L. 1981)

Chapter Compiler's Comments
Histories of Repealed Sections:

37-52-101. En. 66-2101.1 by Sec. 193, Ch. 350, L. 1974; R.C.M. 1947, 66-2101.1.

37-52-102. En. Secs. 17, 18, Ch. 105, L. 1931; re-en. Secs. 4139.17, 4139.18, R.C.M. 1935; R.C.M. 1947, 66-2117(part), 66-2118.

37-52-201. En. Sec. 3, Ch. 105, L. 1931; re-en. Sec. 4139.3, R.C.M. 1935; amd. Sec. 195, Ch. 350, L. 1974; R.C.M. 1947, 66-2103.

37-52-202. En. Sec. 4, Ch. 105, L. 1931; re-en. Sec. 4139.4, R.C.M. 1935; amd. Sec. 124, Ch. 147, L. 1963; amd. Sec. 196, Ch. 350, L. 1974; amd. Sec. 1, Ch. 214, L. 1975; amd. Sec. 37, Ch. 439, L. 1975; amd. Sec. 17, Ch. 101, L. 1977; R.C.M. 1947, 66-2104(2)(1).

37-52-203. En. Sec. 5, Ch. 105, L. 1931; re-en. Sec. 4139.5, R.C.M. 1935; amd. Sec. 197, Ch. 350, L. 1974; R.C.M. 1947, 66-2105.

37-52-301. En. Sec. 1, Ch. 105, L. 1931; re-en. Sec. 4139.1, R.C.M. 1935; R.C.M. 1947, 66-2101.

37-52-302. En. Sec. 8, Ch. 105, L. 1931; re-en. Sec. 4139.8, R.C.M. 1935; amd. Sec. 198, Ch. 350, L. 1974; amd. Sec. 4, Ch. 215, L. 1975; R.C.M. 1947, 66-2108.

37-52-303. En. Sec. 10, Ch. 105, L. 1931; re-en. Sec. 4139.10, R.C.M. 1935; amd. Sec. 199, Ch. 350, L. 1974; amd. Sec. 5, Ch. 215, L. 1975; R.C.M. 1947, 66-2110.

37-52-304. En. Sec. 11, Ch. 105, L. 1931; re-en. Sec. 4139.11, R.C.M. 1935; amd. Sec. 200, Ch. 350, L. 1974; amd. Sec. 6, Ch. 215, L. 1975; R.C.M. 1947, 66-2111.

37-52-305. En. Sec. 4, Ch. 105, L. 1931; re-en. Sec. 4139.4, R.C.M. 1935; amd. Sec. 124, Ch. 147, L. 1963; amd. Sec. 196, Ch. 350, L. 1974; amd. Sec. 1, Ch. 214, L. 1975; amd. Sec. 37, Ch. 439, L. 1975; amd. Sec. 17, Ch. 101, L. 1977; R.C.M. 1947, 66-2104(2)(2).

37-52-306. En. Sec. 14, Ch. 105, L. 1931; re-en. Sec. 4139.14, R.C.M. 1935; amd. Sec. 202, Ch. 350, L. 1974; R.C.M. 1947, 66-2114.

37-52-307 through 37-52-310 reserved.

37-52-311. En. Sec. 15, Ch. 105, L. 1931; re-en. Sec. 4139.15, R.C.M. 1935; amd. Sec. 203, Ch. 350, L. 1974; amd. Sec. 2, Ch. 541, L. 1977; R.C.M. 1947, 66-2115.

37-52-312. En. Sec. 17, Ch. 105, L. 1931; re-en. Sec. 4139.17, R.C.M. 1935; R.C.M. 1947, 66-2117(part).

37-52-401. En. Sec. 16, Ch. 105, L. 1931; re-en. Sec. 4139.16, R.C.M. 1935; R.C.M. 1947, 66-2116.

37-52-402. En. Sec. 3, Ch. 43, L. 1915; re-en. Sec. 4141, R.C.M. 1921; R.C.M. 1947, 66-2119.

CHAPTER 53

TIMESHARE SALES

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Chapter Cross-References

Unit Ownership Act — condominiums, Title 70, ch. 23.

Part 1

General

37-53-101. Short title. This chapter may be cited as the "Montana Timeshare Act".

History: En. Sec. 1, Ch. 444, L. 1987.

37-53-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Advertisement" means a written, printed, audio, or visual communication that is published in whole or in part to sell, offer to sell, or solicit an offer for a timeshare.

(2) "Affiliate" means a person who controls, is controlled by, or is under the control of a developer.

(3) "Association" or "owners' association" means the association of owners created by the timeshare instruments for purposes of managing and maintaining the project for the benefit of all timeshare owners.

(4) "Board" means the board of realty regulation provided for in 2-15-1867.

(5) "Developer" means:

(a) a person creating timeshares or engaged in the business of selling his own timeshares;

(b) a person who controls, is controlled by, or is in common control with the person engaged in creating or selling timeshares; or

(c) any successor or assignee of a person referred to in subsections (5)(a) or (5)(b).

(6) "Managing entity" means a person hired by the timeshare association or developer to manage the timeshare plan or the timeshare property.

(7) "Offer" or "offering" means an inducement, solicitation, or attempt to encourage a person to acquire a timeshare. An offer is made in this state if the offer originates in this state or if the principal timeshare property is located in this state.

(8) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, or other legal or commercial entity.

(9) "Prize and gift promotional offer" means advertising material stating that a prospective purchaser may receive goods or services other than the timeshare plan itself, either free or at a discount, including but not limited to the use of a prize, gift, award, premium, or lodging or vacation certificate.

(10) "Project" means the real property or real estate, that must contain more than one unit, in which timeshares are created by a single instrument or set of instruments.

(11) "Promoter" means any person who initiates the inducement, solicitation, or encouragement of another person, by any means, of the review or acquisition of a timeshare interval.

(12) "Purchaser" means a person, other than a developer, who by means of a voluntary transfer acquires a legal or equitable interest in a timeshare, other than as security for an obligation.

(13) "Real estate" means real estate as defined in 37-51-102.

(14) "Sale" or "sell" includes each contract of sale of, contract to sell, or disposition of a timeshare for value.

(15) "Timeshare broker" means a natural person who supervises a timeshare sales operation and one or more timeshare salespersons.

(16) "Timeshare expenses" means expenditures, fees, charges, or liabilities:

(a) incurred with respect to the timeshares by or on behalf of all timeshare owners in one timeshare property; and

(b) imposed on the timeshare by the entity governing a project of which the timeshare is a part, together with any allocations to reserve. The term does not include purchase money payable for timeshares.

(17) "Timeshare instrument" means one or more documents, by whatever name denominated, creating or regulating timeshares.

(18) "Timeshare interval" or "timeshare interest" means the right, however evidenced or documented, to use and occupy one or more timeshare units on a periodic basis according to an arrangement allocating such use and occupancy rights between similar users.

(19) "Timeshare owner" means a person, other than a developer, who is an owner or co-owner of a timeshare. If title to a timeshare is held in trust, timeshare owner means the beneficiary of the trust.

(20) "Timeshare salesperson" means a person who for a salary, commission, or compensation of any kind is associated, either directly or indirectly, regularly or occasionally, with a timeshare broker to sell, purchase, or negotiate for sale, purchase, lease, or exchange of the timeshare interests in real estate and who, on behalf of a developer, sells or offers to sell a timeshare to a purchaser.

(21) "Timeshare unit" or "unit" means the real property or portion thereof in which the timeshare exists and that is designated for separate use, including campgrounds, campsites, and outdoor recreation sites with spaces designed or promoted for the purpose of locating a trailer, tent, tent trailer, camper, or similar device for land-based portable housing.

History: **En. Sec. 2, Ch. 444, L. 1987.**

37-53-103. Fees. (1) The board shall charge and collect fees fixed by this section. All fees collected under this chapter must be deposited into the state special revenue fund for the use of the board and are not refundable except as provided in this chapter.

(2) The initial fee for filing an application for registration for sale of a timeshare is $500. Any filing containing over 400 intervals must be accompanied by a fee of $5 for each additional interval.

(3) A fee for amendment of registration for the purpose of adding additional intervals during a registration period is $200 plus $5 for each interval in excess of 50 added by such amendment.

(4) The fee for an application for renewal of registration is $200.

(5) The fee for an initial application for or renewal of a license as a timeshare salesperson is $15.

(6) The fee for an initial application for or renewal of a license as a timeshare broker is $35.

(7) The fee for an amendment of registration, other than the addition of units, as required in 37-53-203(3), is $200.

History: **En. Sec. 29, Ch. 444, L. 1987.**

37-53-104. Rulemaking authority. The board shall adopt rules to carry out the provisions of this chapter. The rules may include but are not limited to:

(1) format of forms for applications and renewal of registration and prescribing any additional information to be supplied;

(2) documents acceptable in lieu of registration documents under 37-53-204;

(3) conditions that may be placed upon registration under 37-53-212;

(4) the subject matter of the examination or continuing education requirement for license as a timeshare salesperson or timeshare broker; and

(5) additional information included in a disclosure document.

History: **En. Sec. 30, Ch. 444, L. 1987.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 2

Registration of Timeshare Offerings

37-53-201. Registration of timeshare offering required. A timeshare offering may not be advertised, offered, or sold in this state unless it is registered as provided in this chapter.

History: **En. Sec. 3, Ch. 444, L. 1987.**

37-53-202. Application for registration. An application for registration of a timeshare offering must be in a form developed by the board in conjunction with input from the timeshare industry. The application must be signed by the applicant and accompanied by the registration fee. Except as provided in 37-53-204, the application must contain:

(1) financial statements showing the financial condition of the developer and any affiliate, including:

(a) a balance sheet dated within 4 months before the filing of the application for registration; and

(b) statements of income, shareholders' equity, and material changes in financial position as of the end of the prior fiscal year and for any period between the end of the prior fiscal year and the date of the last balance sheet;

(2) a projected budget for the timeshare project for 2 years after the offering being made, including but not limited to source of revenues and expenses of construction, development, management, maintenance, advertisement, operating reserves, interest, and any other necessary reserves;

(3) a description of the background of the developer for the previous 10 years, including information about the business experience of the developer and any relevant criminal convictions, civil lawsuits, or administrative actions related to any offering during that period;

(4) a statement disclosing any fees in excess of the stated price per unit to be charged to the purchasers, a description of their purpose, and the method of calculation;

(5) a statement disclosing when and where the developer or an affiliate has previously sold timeshares;

(6) a statement of any liens, defects, or encumbrances on or affecting the title to the timeshare units;

(7) copies of all timeshare instruments;

(8) a copy of the disclosure document provided for in 37-53-303, signed by the applicant;

(9) an irrevocable consent to service of process signed by the applicant; and

(10) any other information that the board may by rule require in the protection of the public interest or necessary to describe the risks involved.

History: **En. Sec. 4, Ch. 444, L. 1987.**

37-53-203. Registration period — renewal. (1) A timeshare offering registration is effective for 1 year from the date of approval of the registration application.

(2) Registration of a timeshare offering may be renewed for an additional 1-year period by filing a renewal application with the board no later than 30 days before the expiration of the registration period and paying the prescribed fee. A renewal application must contain any information the board requires to indicate any substantial changes in the information contained in the original application.

(3) If a materially adverse change in the condition of the developer or an affiliate occurs during any year, an amendment to the documents filed under 37-53-202 must be filed, along with the prescribed fee.

History: **En. Sec. 5, Ch. 444, L. 1987.**

37-53-204. Alternative filing documents. (1) In lieu of the documents required to be filed with an application under 37-53-202, the board may accept:

(a) a disclosure document filed with an agency of the United States or any other state; or

(b) a disclosure document compiled in accordance with a rule of an agency of the United States or any other state.

(2) The board shall prescribe by rule those documents acceptable under subsection (1).

History: **En. Sec. 6, Ch. 444, L. 1987.**

37-53-205. Exemption from registration. The registration requirements of this chapter do not apply to:

(1) an offer, sale, or transfer of not more than two timeshare interests by a timeshare owner in a 12-month period;

(2) a gratuitous transfer of a timeshare;

(3) a sale under court order;

(4) a sale by any government or a governmental agency;

(5) a sale by forfeiture, foreclosure, or deed in lieu of foreclosure; or

(6) a sale of a project or all timeshare units therein to any one purchaser.

History: En. Sec. 7, Ch. 444, L. 1987.

37-53-206 through 37-53-210 reserved.

37-53-211. Approval or disapproval of application or registration. (1) Registration of a timeshare offering is effective upon written notice of approval of the application by the board or upon the passage of 30 calendar days after filing of a completed application if not approved or denied prior to that time.

(2) The board may issue an order, subject to 37-53-503, denying, suspending, or revoking any application or registration if the board finds that the order is in the public interest and that:

(a) the application or registration is incomplete or contains a statement that is false or misleading with respect to any material fact;

(b) any provision of this chapter or any rule or order lawfully issued under this chapter has been violated;

(c) the activities of the developer include or would include activities that are illegal; or

(d) the timeshare offering has worked or would tend to work a fraud on purchasers.

(3) The board shall promptly notify the applicant or registrant of any order denying, suspending, or revoking registration and of the applicant's or registrant's right to request a hearing within 20 days of receipt of notification. If the applicant or registrant does not request a hearing, the order remains in effect until the board modifies or vacates it.

History: En. Sec. 8, Ch. 444, L. 1987.

37-53-212. Conditions upon registration. To protect the public interest, the board may require as a condition of registration that the registrant establish an independent trust, escrow, or similar arrangement that assures a purchaser quiet enjoyment of the timeshare unit.

History: En. Sec. 9, Ch. 444, L. 1987.

Cross-References

Trust code, Title 72, ch. 33 through 36.

37-53-213. Waiver of liability. The fact that an application for registration has been filed or that a timeshare offering has been registered does not constitute a finding by the board that any document filed under this chapter is complete, true, and not misleading. The filing or registration does not mean that the board has given approval to, recommended, or determined the merits or qualifications of any person, timeshare, or transaction.

History: En. Sec. 10, Ch. 444, L. 1987.

37-53-214. Approval of advertising. (1) No person may publish an advertisement in this state offering a timeshare that is subject to the registration requirements of 37-53-201 unless a true copy of the advertisement has first been filed in the office of the board at least 7 days before publication or such other period as the board may establish by rule.

(2) Nothing in this chapter applies to any radio or television station or any publisher, printer, or distributor of any newspaper, magazine, billboard, or other advertising medium that accepts advertising in good faith without reasonable knowledge of its violation of any provision of this chapter.

History: En. Sec. 11, Ch. 444, L. 1987.

Part 3

Licensure of Brokers and Salespersons

37-53-301. Licensure of timeshare brokers and timeshare salespersons. (1) (a) A person offering timeshare units for his own account or for the account of others must be licensed as a timeshare salesperson or timeshare broker unless the offering is exempt under 37-53-205. Licensure may be obtained:

(i) upon completion of an application and personal disclosure statement and passage of an examination prescribed by the board demonstrating knowledge of the timeshare industry and this chapter; and

(ii) upon successful completion of a course of education related to the timeshare industry that has been approved by the board.

(b) The board shall then issue a certificate of completion to the applicant.

(2) A person licensed as a real estate broker or salesperson under Title 37, chapter 51, may act as a timeshare salesperson or timeshare broker upon successful completion of a course of education related to the timeshare industry that has been approved by the board. The board shall then issue a certificate of completion to the applicant. No license other than that issued pursuant to Title 37, chapter 51, is required.

History: En. Sec. 12, Ch. 444, L. 1987.

37-53-302. Denial, suspension, or revocation of license or application. The board may by an order, subject to 37-53-503, deny, suspend, or revoke a timeshare salesperson's or timeshare broker's license or application for license if the board finds that the order is in the public interest and that the applicant or licensee:

(1) has filed an application for licensure and personal disclosure statement as a timeshare salesperson or timeshare broker that is incomplete in any material respect or contains any statement that is, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(2) has violated or failed to comply with any provision of this chapter, rules adopted under this chapter, or Title 37, chapter 51;

(3) has been convicted of a felony involving theft, fraud, or any consumer protection statute or a felony involving moral turpitude and related to the occupation of timeshare salesperson or timeshare broker;

(4) is permanently or temporarily enjoined by a court from engaging in or continuing any conduct or practice involving an aspect of the timeshare business;

(5) has engaged in dishonest or unethical practices in the timeshare business; or

(6) has not complied with any condition imposed by the board or is not qualified on the basis of knowledge of the timeshare industry or this chapter.

History: **En. Sec. 13, Ch. 444, L. 1987.**

Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

37-53-303. Disclosure document. A person who offers or sells a timeshare shall provide the prospective purchaser with a written disclosure document before the prospective purchaser signs an agreement for the purchase of a timeshare. The disclosure document must include:

(1) the official name and address of the developer, its parent or affiliates, and the names and addresses of the director and officers of each;

(2) the location of the timeshare property;

(3) a general description of the timeshare property and the timeshare units;

(4) a list of all units offered by the promoter in the same project, including:

(a) the types, current prices, and number of units;

(b) the types and durations of the timeshares;

(c) the maximum number of units that may become part of the timeshare property;

(d) a statement of the maximum number of timeshares that may be created or a statement that there is no maximum;

(5) a description of the types of financing offered by the promoter;

(6) a statement of ownership of all properties included in the timeshare offering, including any liens or encumbrances affecting the property;

(7) copies of any agreements or leases to be signed by purchasers at closing and a copy of the timeshare instrument;

(8) the identity of the managing entity and the name, address, and telephone number of the person or persons in charge, and the manner, if any, whereby the developer may change the managing entity;

(9) a true copy of the current or projected budget of the owners' association along with a description of the nature and purpose of all charges, dues, maintenance fees, and other expenses that may be assessed, including the formula for payment of charges if all timeshares are not sold and a statement of who pays additional costs;

(10) a statement in boldface type on the cover page of the disclosure document that, within 3 days after receipt of a disclosure document or the signing of the timeshare purchase agreement, whichever is later, a purchaser may cancel any agreement for the purchase of a timeshare from a developer or salesperson and that the cancellation must be in writing and be delivered either in person or by certified mail to the developer or the developer's agent;

(11) any restrictions on transfers of a timeshare or portion thereof;

(12) a description of any insurance coverage provided for the benefit of timeshare owners by the managing entity or the timeshare owners' association;

(13) a full and accurate disclosure of whether the timeshare owners are permitted or required to become members of or participate in any program for the exchange of property rights among themselves or with the timeshare owners of other timeshare units, or both, and a complete description of the program; and

(14) any additional information the board finds necessary to fully inform prospective purchasers, including but not limited to the financial and background information required by 37-53-202.

History: **En. Sec. 14, Ch. 444, L. 1987.**

37-53-304. Disclosure to purchaser — cancellation of agreement. The developer or any person offering a timeshare shall provide a prospective purchaser with a copy of the disclosure document described in 37-53-303 before the execution of any agreement for the purchase of a timeshare. A purchaser may, within 3 days following receipt of a disclosure document or signing of a timeshare purchase agreement, whichever is later, cancel the agreement and receive a refund of any consideration paid by providing written notice of the cancellation to the promoter or promoter's agent either by certified mail or personal delivery. If the purchaser does not receive the disclosure document, the agreement is voidable by the purchaser until the purchaser receives the document and for 3 days thereafter. The provisions of this section may not be waived.

History: **En. Sec. 15, Ch. 444, L. 1987.**

37-53-305. Transfer of developer's interest. A developer may not sell, lease, assign, or otherwise transfer his interest in a project unless the transferee agrees in writing to honor the purchaser's right to use and occupy the timeshare unit, to honor the purchaser's right to cancel, and to comply with this chapter. Each purchaser whose contract may be affected must be given written notice of a transfer immediately after the transfer is made.

History: **En. Sec. 16, Ch. 444, L. 1987.**

37-53-306. Good faith requirement — prohibited provisions. (1) The parties to a timeshare agreement shall deal with each other in good faith.

(2) A developer may not require a purchaser to agree to a release, assignment, novation, waiver, or any other provision that relieves a person from a duty imposed by this chapter.

(3) Any provision in a timeshare instrument that designates jurisdiction or venue in a forum outside this state or the state or other jurisdiction where the project is located is void with respect to any cause of action that is enforceable in this state.

History: **En. Sec. 17, Ch. 444, L. 1987.**

37-53-307. Illegal practices. (1) It is unlawful for any person in connection with the offer, sale, or lease of a timeshare interest in this state to:

(a) make any false or misleading statement of a material fact or to omit a material fact;

(b) employ any device, scheme, or artifice to defraud;

(c) engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person;

(d) file or cause to be filed with the board any document that contains false or misleading information; or

(e) violate any provision of this chapter or a rule adopted under this chapter or any applicable provision of Title 37, chapter 51.

(2) A violation of this section is a misdemeanor punishable as provided in 46-18-212.

History: **En. Sec. 18, Ch. 444, L. 1987.**

Cross-References

Fraud defined, 28-2-404 through 28-2-406.

Unfair trade practices and consumer protection, Title 30, ch. 14.

37-53-308. Civil liability. Any person who offers, sells, or materially aids in the offer or sale of a timeshare in violation of this chapter is liable to the person buying the timeshare, who may sue to recover the consideration paid for the timeshare, together with interest at the current legal rate from date of payment and costs, upon the tender of the timeshare or for damages if the person no longer owns the timeshare.

History: **En. Sec. 19, Ch. 444, L. 1987.**

Cross-References

Legal interest, 31-1-106.

Part 4

Promotional Offers

Part Cross-References

Consumer protection — unlawful practices, 30-14-103.

Unfair competition and deception, 30-14-104.

37-53-401. Prize and gift promotional offers — filing. (1) A separate filing for each prize and gift promotional offer to be used in the sale of timeshare intervals must be made with the board at least 14 days prior to the use of such offer by the developer. No advertising material related to a prize and gift promotional offer may be distributed unless it is first filed with the board. If the board determines that any prize or gift has been misrepresented by the developer and if upon notification thereof the developer fails to correct such misrepresentation, the board may revoke or suspend the application or registration of the developer.

(2) Each filing of a prize and gift promotional offer with the board must include, when applicable:

(a) a copy of all advertising material to be used in connection with the prize and gift promotional offer;

(b) the name, address, and telephone number, including area code, of the supplier or manufacturer from whom each prize, gift, or other item is obtained;

(c) the manufacturer's model number or other description of such item;

(d) the information on which the developer relies in determining the verifiable retail value;

(e) the name, address, and telephone number, including area code, of the promotional entity responsible for overseeing and operating the prize and gift promotional offer; and

(f) the name and address of the registered agent in the state of the promotional entity for service of process purposes.

(3) Each developer shall file with the board by March 1 of each year the name, address, and telephone number, including area code, of each person who actually received a prize, gift, or other item that had a verifiable retail value or manufacturer's suggested retail price in excess of $150.

History: **En. Sec. 20, Ch. 444, L. 1987.**

37-53-402. Prize and gift promotional offer advertising content. All advertising material to be distributed in connection with a prize and gift promotional offer must contain:

(1) a description of the prize, gift, or other item that the prospective purchaser will actually receive, including the manufacturer's retail price or, if none is available, the verifiable retail value;

(2) all rules, terms, requirements, and preconditions that must be fulfilled or met before a prospective purchaser may claim any prize, gift, or other item involved in the prize and gift promotional plan, including whether the prospective purchaser is required to attend a sales presentation in order to receive the prize, gift, or other item;

(3) the date the offer expires;

(4) a statement of the number of items that will be awarded if the number of prizes, gifts, or other items to be awarded is limited; and

(5) the method by which prizes, gifts, or other items are to be awarded.

History: **En. Sec. 21, Ch. 444, L. 1987.**

37-53-403. Awarding of gifts and prizes. (1) Any prize, gift, or other item offered pursuant to a prize and gift promotional offer must be delivered to the prospective purchaser on the day he appears to claim it, whether or not he purchases a timeshare interval. If the prize is not available it must be presented or mailed at the developer's expense, postage prepaid, within 30 days thereafter.

(2) All prizes, gifts, or other items represented by the developer to be awarded in connection with any prize and gift promotional offer must be awarded by the date referenced in the advertising material used in connection with such offer.

History: **En. Sec. 22, Ch. 444, L. 1987.**

Part 5

Enforcement

37-53-501. Investigations by board. (1) The board may:

(a) conduct public or private investigations within or outside the state to:

(i) determine whether any registration should be granted, denied, or revoked;

(ii) determine whether a person has violated or is about to violate a provision of this chapter; or

(iii) aid in the enforcement of this chapter and rules issued under this chapter;

(b) administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records that the board considers relevant to the inquiry; and

(c) publish information concerning a violation of this chapter or a rule or order issued under this chapter.

(2) If a person fails to comply with a lawful subpoena, refuses to testify under lawful interrogation, or refuses to produce documents and records, the board may apply to the district court of any county for relief. After satisfactory evidence of willful disobedience, the court may compel obedience by proceedings for contempt.

History: En. Sec. 23, Ch. 444, L. 1987.

37-53-502. Cease and desist orders. The board may by summary order, subject to 37-53-503, require any person to cease and desist from an act or practice if it appears that the person is violating or is about to violate a provision of this chapter or a rule or order issued under this chapter.

History: En. Sec. 24, Ch. 444, L. 1987.

37-53-503. Hearing procedure — orders. (1) Upon the entry of an order under 37-53-211, 37-53-302, or 37-53-502, the board shall promptly notify the applicant or registrant that the order has been entered and the reasons therefor and that it will become effective 20 days after receipt of the board's notification unless a hearing is requested under this section, in which case it will become effective on the date the board issues its final order. If a hearing is requested in writing by the applicant, the matter will be scheduled for hearing in accordance with subsection (2).

(2) If entry of the order results in denial of an application under 37-53-211 or 37-53-302, the hearing must be held within a reasonable time and in accordance with Title 2, chapter 4.

History: En. Sec. 25, Ch. 444, L. 1987.

37-53-504. Attorney general to act as attorney for board. The attorney general shall act as attorney for the board in actions and proceedings brought by or against it under this chapter. Fees and expenses of the attorney general acting in this capacity must be paid out of board money in the state special revenue fund.

History: En. Sec. 26, Ch. 444, L. 1987.

37-53-505. Injunctions. (1) The attorney general, in the name of the state or the board, may bring an action to enjoin a person from violating a provision of this chapter. Upon a proper showing, the district court shall grant a permanent or temporary injunction, restraining order, or writ of mandamus. The court may make any additional order of judgment necessary to restore to a person any interest in money or property, real or personal, that may have been acquired by an act prohibited or declared to be unlawful under this chapter. The prevailing party may recover costs of the action, including a reasonable attorney fee.

(2) The district court issuing an injunction shall retain jurisdiction. A person who violates the terms of an injunction shall pay a civil penalty as set by the court, but not to exceed $25,000.

(3) The attorney general, in the name of the state or the board, may apply to the district court to appoint a receiver or conservator for any person or

the assets of any person who is subject to a cease and desist order, permanent or temporary injunction, restraining order, or writ of mandamus.

History: **En. Sec. 27, Ch. 444, L. 1987.**

Cross-References

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20).

Injunctions, Title 27, ch. 19.

37-53-506. Criminal proceedings. The board may refer evidence concerning violations of this chapter to the attorney general or the proper prosecuting attorney, who may institute appropriate criminal proceedings.

History: **En. Sec. 28, Ch. 444, L. 1987.**

CHAPTERS 54 THROUGH 59

RESERVED

CHAPTER 60

PRIVATE INVESTIGATORS AND PATROL OFFICERS

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37-60-406. Peace officer's casual employment.
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37-60-408. Restrictions on use of certain automatic dial-up systems.
37-60-409. Installation of new security alarm systems by electrician.
37-60-410 reserved.
37-60-411. Penalties — investigation — enforcement — review.

Chapter Cross-References

Service of process and other papers, Title 25, ch. 3.

Weapons, Title 45, ch. 8, part 3.

Search and seizure, Title 46, ch. 5.

Arrest, Title 46, ch. 6.

Part 1

General

37-60-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Alarm response runner" means any individual employed by a contract security company or a proprietary security organization to respond to security alarm system signals.

(2) "Armed carrier service" means any person who transports or offers to transport under armed private security guard from one place to another any currency, documents, papers, maps, stocks, bonds, checks, or other items of value that require expeditious delivery.

(3) "Armed private investigator" means a private investigator who at any time wears, carries, possesses, or has access to a firearm in the performance of his duties.

(4) "Armed private security guard" means an individual employed by a contract security company or a proprietary security organization whose duty or any portion of whose duty is that of a security guard, armored car service guard, carrier service guard, or alarm response runner and who at any time wears or carries a firearm in the performance of his duties.

(5) "Armored car service" means any person who transports or offers to transport under armed private security guard from one place to another any currency, jewels, stocks, bonds, paintings, or other valuables of any kind in a specially equipped motor vehicle that offers a high degree of security.

(6) "Board" means the board of private security patrol officers and investigators provided for in 2-15-1891.

(7) "Branch office" means any office of a licensee within the state, other than its principal place of business within the state.

(8) "Contract security company" means any person who installs or maintains a security alarm system, undertakes to provide a private security guard,

alarm response runner, armored car service, street patrol service, or armed carrier service on a contractual basis to another person who exercises no direction and control over the performance of the details of the services rendered.

(9) "Department" means the department of commerce provided for in 2-15-1801.

(10) "Insurance adjuster" means a person employed by an insurance company, other than a private investigator, who for any consideration whatsoever conducts investigations in the course of adjusting or otherwise participating in the disposal of any claims in connection with a policy of insurance but who does not perform surveillance activities or investigate crimes or wrongs committed or threatened against the United States or any state or territory thereof.

(11) "Licensee" means a person licensed under this chapter.

(12) "Paralegal" or "legal assistant" means a person qualified through education, training, or work experience to perform substantive legal work that requires knowledge of legal concepts and that is customarily but not exclusively performed by a lawyer and who may be retained or employed by a lawyer, law office, governmental agency, or other entity or who may be authorized by administrative, statutory, or court authority to perform this work.

(13) "Person" includes any individual, firm, company, association, organization, partnership, and corporation.

(14) "Private investigator" means a person other than an insurance adjuster who for any consideration whatsoever makes or agrees to make any investigation with reference to:

(a) crimes or wrongs done or threatened against the United States or any state or territory thereof;

(b) the identity, habits, conduct, business, occupation, honesty, integrity, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, reputation, or character of any person;

(c) the location, disposition, or recovery of lost or stolen property;

(d) the cause or responsibility for fires, libels, losses, accidents, or injury to persons or property; or

(e) securing evidence to be used before any court, board, officer, or investigating committee.

(15) "Private security guard" means an individual employed or assigned duties to protect a person or property or both a person and property from criminal acts and whose duties or any portion of whose duties include but are not limited to the prevention of unlawful entry, theft, criminal mischief, arson, or trespass on private property, or the direction of the movements of the public in public areas.

(16) "Proprietary security organization" means any person who employs a private security guard, an alarm response runner, armored car service, street patrol service, or armed carrier service on a routine basis solely for the purposes of that person and exerts direction and control over the performance of the details of the service rendered.

(17) "Qualifying agent" means, in the case of a corporation, a corporate employee employed in a management capacity or, in the case of a partnership, a general or unlimited partner meeting the qualifications set forth in this

chapter for the operation of a contract security company, proprietary security organization, or private investigator, whichever is applicable.

(18) "Resident manager" means the person appointed to exercise direct supervision, control, charge, management, or operation of each branch office located in this state where the business of the licensee is conducted.

(19) "Security alarm system" means an assembly of equipment and devices or a single device such as a solid state unit which plugs directly into a 110-volt AC line, designed to detect or signal or to both detect and signal unauthorized intrusion, movement, or criminal acts at a protected premises, to which signals police, private security guards, or alarm response runners are expected to respond. Fire alarm systems and alarm systems that monitor temperature, humidity, or any other atmospheric condition not directly related to the detection of an unauthorized intrusion or criminal act at a premises are not included within the meaning of this definition.

(20) "Street patrol service" means any contract security company or proprietary security organization that uses foot patrols, motor vehicles, or any other means of transportation to maintain public order or detect criminal activities in public areas or thoroughfares.

(21) "Unarmed private investigator" means a private investigator who does not wear, carry, possess, or have access to a firearm in the performance of his duties.

(22) "Unarmed private security guard" means an individual employed by a contract security company or a proprietary security organization whose duty or any portion of whose duty is that of a private security guard, armored car service guard, or alarm response runner, who does not wear or carry a firearm in the performance of those duties.

History: **En. 66-3301 by Sec. 1, Ch. 234, L. 1974; R.C.M. 1947, 66-3301; amd. Sec. 15, Ch. 274, L. 1981; amd. Sec. 2, Ch. 550, L. 1983; amd. Sec. 1, Ch. 647, L. 1985; amd. Sec. 1, Ch. 63, L. 1987; amd. Sec. 50, Ch. 83, L. 1989; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 1, Ch. 332, L. 1989.**

Compiler's Comments

1989 Amendments: Chapter 83 substituted "resident manager" for "resident agent" as defined term.

Chapter 217 in definition of Board changed "patrolmen" to "patrol officers".

Chapter 332 inserted definition of paralegal or legal assistant.

Cross-References

Libel and slander, Title 27, ch. 1, part 8.

Criminal mischief and arson, Title 45, ch. 6, part 1.

Criminal trespass and burglary, Title 45, ch. 6, part 2.

Theft and related offenses, Title 45, ch. 6, part 3.

37-60-102. Repealed. Sec. 34, Ch. 550, L. 1983.

History: **En. 66-3305 by Sec. 5, Ch. 234, L. 1974; R.C.M. 1947, 66-3305(1).**

37-60-103. Purpose. The purpose of this chapter is to increase the levels of integrity, competency, and performance of private security personnel and private investigators in order to safeguard the public health, safety, and welfare against illegal, improper, or incompetent actions committed by private security personnel or private investigators.

History: **En. 66-3305 by Sec. 5, Ch. 234, L. 1974; R.C.M. 1947, 66-3305(2); amd. Sec. 3, Ch. 550, L. 1983.**

37-60-104. Restrictions on contract security company and proprietary security organization. No employee of a contract security company or proprietary security organization may make any investigation or investigations except those that are incidental to the theft, loss, embezzlement, misappropriation, or concealment of any property or any other thing which he has been hired or engaged to protect, guard, or watch.

History: **En. 66-3305 by Sec. 5, Ch. 234, L. 1974; R.C.M. 1947, 66-3305(3); amd. Sec. 4, Ch. 550, L. 1983.**

Cross-References

Theft and related offenses, Title 45, ch. 6, part 3.

37-60-105. Exemptions. This chapter does not apply to:

(1) (a) any one person employed singly and exclusively by any one employer in connection with the affairs of such employer only and where there exists an employer-employee relationship and the employee is unarmed, does not wear a uniform, and is guarding inside a structure which at the time is not open to the public;

(b) a person:

(i) employed singly and exclusively by a retail merchant;

(ii) performing at least some of his work for the retail merchant as a private security guard; and

(iii) who has received training as a private security guard from the employer or at the employer's direction;

(2) an officer or employee of the United States of America or of this state or a political subdivision thereof while such officer or employee is engaged in the performance of his official duties;

(3) a person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons or as to the personal habits and financial responsibility of applicants for insurance, indemnity bonds, or commercial credit;

(4) (a) an attorney at law in performing his duties as an attorney at law;

(b) a legal intern, paralegal, or legal assistant employed by a licensed attorney; or

(c) a law student who is serving a legal internship;

(5) a collection agency or finance company licensed to do business under the laws of this state, or an employee thereof while acting within the scope of his employment, while making an investigation incidental to the business of the agency or company, including an investigation of the location of a debtor or his property where the contract with an assignor creditor is for the collection of claims owed or due or asserted to be owed or due or the equivalent thereof;

(6) special agents employed by railroad companies, provided the railroad company notifies the board that such agents are operating in the state;

(7) insurers and insurance producers and insurance brokers licensed by the state, performing duties in connection with insurance transacted by them;

(8) an insurance adjuster, as defined by 37-60-101(10); or

(9) an internal investigator or auditor, while making an investigation incidental to the business of the agency or company by which he is singularly and regularly employed.

History: **En. 66-3306 by Sec. 6, Ch. 234, L. 1974; R.C.M. 1947, 66-3306; amd. Sec. 5, Ch. 550, L. 1983; amd. Sec. 2, Ch. 647, L. 1985; amd. Sec. 2, Ch. 63, L. 1987; amd. Sec. 2, Ch. 332, L. 1989.**

Compiler's Comments

1989 Amendment: In (4)(b) inserted "paralegal, or legal assistant"; inserted (4)(c) that read: "(c) a law student who is serving a legal internship"; and made minor changes in phraseology and punctuation.

Cross-References

Consumer reporting agencies, Title 31, ch. 3, part 1.

Insurance producers, adjusters, consultants, and administrators, Title 33, ch. 17.

Part 2

Director of Department — Board

Part Cross-References

Duties and powers of Department heads, 2-15-112.

Board of private security patrol officers and investigators created, 2-15-1891.

Duties of director, 37-1-121.

37-60-201. Organization — meetings — records. The board shall meet annually and shall elect from among the seven members a president and a secretary. The board shall hold other meetings when necessary to transact its business. A majority of the board constitutes a quorum at any meeting. The department shall keep complete minutes and records of the meetings and rules and orders promulgated by the board. Copies of records and papers kept by the department, certified by the chairman and authenticated by the seal of the board, shall be received in evidence in courts with like effect as the original. Records of the board are open to public inspection under rules it prescribes.

History: **En. 66-3302 by Sec. 2, Ch. 234, L. 1974; R.C.M. 1947, 66-3302; amd. Sec. 6, Ch. 550, L. 1983.**

37-60-202. Rulemaking power. The board shall adopt and enforce rules:

(1) specifying the form of and procedure to be used in granting, denying, suspending, or revoking any license or identification card;

(2) fixing the qualifications of resident managers, qualifying agents, licensees, and holders of identification cards, in addition to those prescribed in this chapter, necessary to promote and protect the public welfare;

(3) establishing, in accordance with 37-1-134, application and examination fees for original or renewal licenses and identification cards, and providing for refunding of any such fees;

(4) prohibiting the establishment of branch offices of any licensee, except a proprietary security organization, without approval by the board, establishing qualification requirements and license fees for those offices;

(5) for the certification of private investigator and private security guard training programs, including the certification of firearms training programs and firearms instructors;

(6) for the approval of weapons;

(7) requiring the maintenance of records;

(8) requiring licensees to file such insurance policy or proof of financial responsibility as the board considers necessary with the board;

(9) defining "unprofessional conduct" for the purposes of removal from the board and suspension or revocation of licenses and identification cards;

(10) establishing the expiration and renewal periods for licenses and identification cards;

(11) for the temporary employment of persons without the required licenses or identification cards;

(12) providing for the issuance of probationary and temporary licenses for contract security companies and private investigators;

(13) providing for the issuance of probationary identification cards for private investigators who do not meet the requirements for age, employment experience, and written examination; and

(14) providing for the application of administrative fines and penalties for minor infractions of this chapter and supporting rules.

History: En. 66-3303 by Sec. 3, Ch. 234, L. 1974; R.C.M. 1947, 66-3303; amd. Sec. 7, Ch. 550, L. 1983; amd. Sec. 8, Ch. 647, L. 1985; amd. Sec. 3, Ch. 63, L. 1987.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

37-60-203 through 37-60-210 reserved.

37-60-211. Compensation of board members — expenses. Each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 8, Ch. 550, L. 1983.

37-60-212. Attorney general to act as attorney for the board. The attorney general shall act as attorney for the board in actions and proceedings brought by or against it under this chapter. Fees and expenses of the attorney general acting in this capacity shall be paid out of board money in the state special revenue fund.

History: En. Sec. 9, Ch. 550, L. 1983; amd. Sec. 48, Ch. 281, L. 1983.

Cross-References

Powers and duties of Attorney General, 2-15-501.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-60-301. License required. (1) Except as provided in 37-60-105, it is unlawful for any person to act as or perform the duties as defined in 37-60-101 of a contract security company or proprietary security organization, a private investigator, or a private security guard without having first obtained a license from the board. Those persons licensed on April 18, 1983, shall retain their current licensure status and must renew their licenses on the renewal date as prescribed by the board.

(2) It is unlawful for any unlicensed person to act as, pretend to be, or represent himself as being licensed as a private investigator, a contract security company, a proprietary security organization, or a private security guard.

(3) A person who knowingly engages an unlicensed private investigator, private security guard, or contract security company is guilty of a misdemeanor punishable under 37-60-411.

History: En. 66-3304 by Sec. 4, Ch. 234, L. 1974; R.C.M. 1947, 66-3304; amd. Sec. 10, Ch. 550, L. 1983; amd. Sec. 4, Ch. 63, L. 1987.

Cross-References

Licensing investigation and review — record access, 37-1-135.

37-60-302. Qualifying agent and resident manager required — substitution. (1) Any person not a resident of this state who applies for a license under this chapter shall, before application to the board, appoint for the duration of the license a qualifying agent and a resident manager. Every qualifying agent and resident manager shall satisfy the appropriate licensing requirements of this chapter.

(2) A resident manager must be appointed for each branch office located in this state, and the business of the applicant or licensee must be conducted under his direct supervision and control.

(3) If a qualifying agent or resident manager for any reason ceases to perform the duties of a qualifying agent or resident manager on a regular basis, the licensee shall promptly notify the board by certified mail of that fact and of the name of a substitute individual, who shall make application to the board for continuation of the license. Pending application by and board action upon the application of the substitute, the board may suspend the license or extend it for a reasonable time.

History: En. 66-3307 by Sec. 7, Ch. 234, L. 1974; R.C.M. 1947, 66-3307; amd. Sec. 11, Ch. 550, L. 1983; amd. Sec. 3, Ch. 647, L. 1985.

37-60-303. License qualifications. (1) Except as otherwise specified in this section, an applicant for licensure under this chapter shall submit evidence under oath that he:

(a) is at least 18 years of age;

(b) is a citizen of the United States;

(c) has not been convicted in any jurisdiction of any felony or any crime involving moral turpitude or illegal use or possession of a dangerous weapon, for which a full pardon or similar relief has not been granted;

(d) has not been judicially declared incompetent by reason of any mental defect or disease or, if so declared, has been fully restored;

(e) is not suffering from habitual drunkenness or from narcotics addiction or dependence;

(f) is of good moral character; and

(g) has complied with such other experience qualifications as may be set by the rules of the board.

(2) In addition to meeting the qualifications in subsection (1), an applicant for licensure as a private security guard shall:

(a) complete the training requirements of a private security guard training program certified by the board and provide, on a form prescribed by the board, written notice of satisfactory completion of such training; and

(b) fulfill such other requirements as the board may by rule prescribe.

(3) In addition to meeting the qualifications in subsection (1), each applicant for a license to act as a private investigator shall submit evidence under oath that he:

(a) is at least 21 years of age;

(b) has at least a high school education or its equivalent;

(c) has not been dishonorably discharged from any branch of the United States military service;

(d) for a period of not less than 3 years:

(i) has been lawfully engaged in the private investigative business;

(ii) has been lawfully employed as a private investigator or been the holder of a certificate of authority to conduct a private investigative business; or

(iii) has been an investigator, detective, special agent, or peace officer of a city, county, or state government or of the United States government;

(e) has completed the training requirements of a private investigator training program certified by the board and furnished, on a form prescribed by the board, written notice of satisfactory completion of such training; and

(f) has fulfilled such other requirements as the board may by rule prescribe.

(4) Up to one-half of the experience required by subsection (3)(d) may be met by a combination of education and training as accepted by the board. All college credits must be from an accredited college or university and be verified by transcript.

(5) Applicants who will wear or carry firearms in performance of their duties shall submit written notice of satisfactory completion of a firearms training program certified by or satisfactory to the board, as it may by rule prescribe.

(6) A corporation applying for a license under this section must be incorporated under the laws of this state or be duly qualified to do business within this state.

(7) The board shall require an applicant to demonstrate by written examination such additional qualifications as the board may by rule require.

History: En. 66-3308 by Sec. 8, Ch. 234, L. 1974; R.C.M. 1947, 66-3308; amd. Sec. 12, Ch. 550, L. 1983; amd. Sec. 4, Ch. 647, L. 1985; amd. Sec. 5, Ch. 63, L. 1987.

Cross-References

Proof of execution, Title 1, ch. 5, part 3.

Power of notary to take acknowledgments, 1-5-416.

Oaths, Title 1, ch. 6.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Carrying or possession of firearms, 37-60-101.

Certification of firearms training programs, 37-60-202.

Approval of weapons, 37-60-405.

Perjury, 45-7-201.

False swearing, 45-7-202.

37-60-304. Licenses — application form and content. (1) Application for a license shall be made on a form prescribed by the board and accompanied by the application fee set by the board.

(2) An application shall be made under oath and shall include:

(a) the full name and address of the applicant;

(b) the name under which the applicant intends to do business;

(c) a statement as to the general nature of the business in which the applicant intends to engage;

(d) a statement as to whether the applicant desires to be licensed as a contract security company, a proprietary security organization, a private investigator, or a private security guard;

(e) two recent photographs of the applicant, of a type prescribed by the board, and two classifiable sets of his fingerprints;

(f) a statement of his age and experience qualifications;

(g) such other information, evidence, statements, or documents as may be prescribed by the rules of the board; and

(h) if the applicant is a person other than an individual, the full name and residence address of each of its partners, officers, and directors and its manager.

(3) The board shall verify the statements in the application and the applicant's moral character. The board shall send written notification to the chief of police, the sheriff, and the county attorney in whose jurisdiction the principal office of the applicant is to be located that an application has been submitted.

History: En. 66-3309 by Sec. 9, Ch. 234, L. 1974; R.C.M. 1947, 66-3309; amd. Sec. 22, Ch. 22, L. 1979; amd. Sec. 13, Ch. 550, L. 1983; amd. Sec. 5, Ch. 647, L. 1985; amd. Sec. 6, Ch. 63, L. 1987.

Cross-References

Oaths, Title 1, ch. 6.

Perjury, 45-7-201.

False swearing, 45-7-202.

37-60-305. Repealed. Sec. 18, Ch. 63, L. 1987.

History: En. 66-3310 by Sec. 10, Ch. 234, L. 1974; R.C.M. 1947, 66-3310; amd. Sec. 14, Ch. 550, L. 1983; amd. Sec. 6, Ch. 647, L. 1985.

37-60-306. Repealed. Sec. 18, Ch. 63, L. 1987.

History: En. 66-3311 by Sec. 11, Ch. 234, L. 1974; R.C.M. 1947, 66-3311; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 15, Ch. 550, L. 1983; amd. Sec. 7, Ch. 647, L. 1985.

37-60-307. Action on application. (1) The board shall grant the application for an original or renewal license or identification card unless it finds that the applicant, branch office manager, or qualifying agent has:

(a) not met the qualifications of 37-60-303;

(b) practiced fraud, deceit, or misrepresentation in the application process;

(c) knowingly made a material misstatement in the application for a license;

(d) violated any of the provisions of this chapter or the rules of the board; or

(e) taken any action warranting suspension or revocation under 37-60-321.

(2) If an original or renewal license or identification card is denied, the applicant may request a hearing within 30 days after receipt of notice of denial. The hearing must be held in accordance with the provisions of the Montana Administrative Procedure Act and the rules of the department of commerce.

(3) Licenses or identification cards must be granted by name for those categories of persons listed in 37-60-101(1), (2), (3), (4), (5), (8), (14), (15), (16), (17), (18), (20), (21), or (22), or any combination of the foregoing.

History: **En. 66-3312 by Sec. 12, Ch. 234, L. 1974; R.C.M. 1947, 66-3312; amd. Sec. 16, Ch. 550, L. 1983; amd. Sec. 7, Ch. 63, L. 1987; amd. Sec. 3, Ch. 332, L. 1989.**

Compiler's Comments

1989 Amendment: In (3) corrected internal references; and made minor changes in phraseology.

37-60-308. Temporary employment without identification card — authority of board. The board may, under such conditions as it shall prescribe by rule, authorize the employment by any licensee of any person for not more than 30 days who, because of his failure to obtain an identification card, could otherwise not act as a private security guard or private investigator.

History: **En. 66-3313 by Sec. 13, Ch. 234, L. 1974; R.C.M. 1947, 66-3313; amd. Sec. 17, Ch. 550, L. 1983; amd. Sec. 8, Ch. 63, L. 1987; amd. Sec. 51, Ch. 83, L. 1989.**

Compiler's Comments

1989 Amendment: Near end, after "identification card", deleted "in accordance with 37-60-301 or 37-60-304".

37-60-309. Form of license and identification card. The license and identification card shall be in such form as may be determined by the board.

History: **En. 66-3314 by Sec. 14, Ch. 234, L. 1974; R.C.M. 1947, 66-3314; amd. Sec. 18, Ch. 550, L. 1983; amd. Sec. 9, Ch. 63, L. 1987.**

37-60-310. Display of license and identification card. (1) A license shall at all times be posted in a conspicuous place in the principal place of business of the licensee.

(2) Any holder of an identification card must carry the card on his person while performing his duties. Any peace officer of this state or any of its political subdivisions may request to see the card at any reasonable time, and the card must be shown.

History: **En. 66-3315 by Sec. 15, Ch. 234, L. 1974; R.C.M. 1947, 66-3315; amd. Sec. 20, Ch. 550, L. 1983; amd. Sec. 10, Ch. 63, L. 1987.**

37-60-311. Repealed. Sec. 34, Ch. 550, L. 1983.

History: **En. 66-3316 by Sec. 16, Ch. 234, L. 1974; R.C.M. 1947, 66-3316.**

37-60-312. Annual renewal. (1) Licenses and identification cards issued under this chapter expire at midnight on the dates prescribed by the board if not, in each instance, renewed. To renew an unexpired license, the licensee shall, on or before the date on which it would otherwise expire, apply for renewal on a form prescribed by the board and pay the renewal fee prescribed by this chapter.

(2) The board may refuse to renew a license or identification card for any reason for which it could refuse to grant an original application or suspend or revoke any license or identification card under 37-60-321.

History: **En. 66-3329 by Sec. 29, Ch. 234, L. 1974; R.C.M. 1947, 66-3329; amd. Sec. 21, Ch. 550, L. 1983; amd. Sec. 11, Ch. 63, L. 1987.**

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

37-60-313. Repealed. Sec. 34, Ch. 550, L. 1983.

History: En. 66-3330 by Sec. 30, Ch. 234, L. 1974; amd. Sec. 1, Ch. 42, L. 1975; R.C.M. 1947, 66-3330.

37-60-314. Nontransferability of license — record changes. (1) No license issued under this chapter is transferable.

(2) A licensee shall notify the board within 5 days of any change in its officers or directors or other material change in the information previously furnished or required to be furnished to the board or any other material change or occurrence that could reasonably be expected to affect the licensee's right to a license. Upon such change or occurrence, the board may suspend or revoke the license or may allow the business to be carried on for a temporary period under terms and conditions as the board may require.

(3) This section may not be applied to restrict the sale of a business if the buyer qualifies for a license under the provisions of this chapter.

History: En. 66-3317 by Sec. 17, Ch. 234, L. 1974; R.C.M. 1947, 66-3317; amd. Sec. 22, Ch. 550, L. 1983.

37-60-315 through 37-60-319 reserved.

37-60-320. Fees. (1) The fees prescribed by the board and collected by the department must be deposited into the state special revenue fund for the use of the board, subject to 37-1-101(6).

(2) The department shall keep an accurate account of funds received and vouchers issued by the department.

History: En. Sec. 19, Ch. 550, L. 1983; amd. Sec. 48, Ch. 281, L. 1983.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-60-321. Suspension or revocation. The board may suspend or revoke a license or identification card issued under this chapter if it determines that the licensee or its manager or qualifying agent or any of its officers, directors, or partners or any holder of an identification card has:

(1) made any false statement or given any false information in connection with an application for a grant, renewal, or reinstatement of a license or identification card;

(2) violated any provisions of this chapter;

(3) violated any rule of the board adopted pursuant to the authority contained in this chapter;

(4) been convicted of a felony or any crime involving moral turpitude or illegally using, carrying, or possessing a dangerous weapon and as a result of such conviction is under state supervision;

(5) impersonated or permitted or aided and abetted an employee to impersonate a law enforcement officer or employee of the United States of America or of any state or political subdivision thereof;

(6) committed or permitted any employee to commit any act, while the license or identification card was expired, which would be cause for suspension, revocation, or denial of an application;

(7) willfully failed or refused to render to a client services or a report as agreed between the parties and for which compensation has been paid or tendered in accordance with the agreement of the parties;

(8) knowingly violated or advised, encouraged, or assisted the violation of any court order or injunction in the course of business as a licensee or holder of an identification card;

(9) resorted to fraud, misrepresentation, or deception, in the course of business, which was not required to perform a client service; or

(10) been guilty of unprofessional conduct as defined by the rules of the board.

History: **En. 66-3327 by Sec. 27, Ch. 234, L. 1974; R.C.M. 1947, 66-3327; amd. Sec. 23, Ch. 550, L. 1983; amd. Sec. 12, Ch. 63, L. 1987.**

Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Duties of Director in investigation of unethical conduct, 37-1-121.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Weapons, Title 45, ch. 8, part 3.

37-60-322. Surrender of licenses and identification cards. (1) Whenever a license is suspended or revoked, the licensee shall within 24 hours after receiving notification of the suspension or revocation by the board surrender the license by mailing it or delivering it personally to the board.

(2) Whenever any person to whom an identification card has been issued ceases employment for which the card was issued or has his card revoked or suspended by the board, he shall surrender the card within 5 days by mail or personally deliver the card to the board.

History: **En. Sec. 24, Ch. 550, L. 1983; amd. Sec. 13, Ch. 63, L. 1987.**

Part 4

Provisions Regulating Practice

37-60-401. Responsibility of licensee for conduct of employees. A licensee shall at all times be legally responsible for the good conduct in the business of each employee, including his manager.

History: **En. 66-3318 by Sec. 18, Ch. 234, L. 1974; R.C.M. 1947, 66-3318.**

Cross-References

Agency, Title 28, ch. 10.

Criminal trespass and burglary, Title 45, ch. 6, part 2.

Impersonating a public servant, 45-7-209.

37-60-402. Confidentiality of information — false reports — badges and uniforms — illegal entry. (1) A licensee or officer, director, partner, or manager of a licensee may divulge to any law enforcement officer or county attorney or his representative any information he may acquire as to any criminal offense, but he may not divulge to any other person, except as required by law, any information acquired by him except at the direction of the employer or client for whom the information was obtained.

(2) No licensee or officer, director, partner, manager, or employee of a licensee may knowingly make any false report to his employer or client for whom information was being obtained.

(3) No written report may be submitted to a client except by the licensee, qualifying manager, or a person authorized by either of them, and the person submitting the report shall exercise diligence in ascertaining whether or not the facts and information in the report are true and correct.

(4) No licensee or officer, director, partner, manager, or employee of a licensee may use a title, wear a uniform, use an identification card, or make any statement with the intent to give an impression that he is connected in any way with the federal government, a state government, or any political subdivision of a state government.

(5) No licensee or officer, director, partner, manager, or employee of a licensee may enter any private building or portion thereof without the consent of the owner or of the person in legal possession thereof.

History: En. 66-3319 by Sec. 19, Ch. 234, L. 1974; amd. Sec. 29, Ch. 101, L. 1977; R.C.M. 1947, 66-3319; amd. Sec. 25, Ch. 550, L. 1983.

Cross-References

Criminal trespass and burglary, Title 45, ch. 6, part 2.

Impersonating a public servant, 45-7-209.

37-60-403. Licensee advertising. Every advertisement by a licensee soliciting or advertising business shall contain his name and address as they appear in the records of the board.

History: En. 66-3321 by Sec. 21, Ch. 234, L. 1974; R.C.M. 1947, 66-3321; amd. Sec. 26, Ch. 550, L. 1983.

37-60-404. Duty to maintain employee records. Each employer shall maintain a record containing such information relative to his employees as may be prescribed by the board.

History: En. 66-3320 by Sec. 20, Ch. 234, L. 1974; R.C.M. 1947, 66-3320; amd. Sec. 27, Ch. 550, L. 1983.

37-60-405. Approval of weapons. The weapons to be carried by armed licensees or identification card holders must be approved by the board.

History: En. 66-3328 by Sec. 28, Ch. 234, L. 1974; R.C.M. 1947, 66-3328; amd. Sec. 28, Ch. 550, L. 1983; amd. Sec. 14, Ch. 63, L. 1987.

Cross-References

Weapons, Title 45, ch. 8, part 3.

37-60-406. Peace officer's casual employment. A peace officer, as defined in 46-1-201, or a reserve officer, as defined in 7-32-201, is not prohibited or restricted from accepting and engaging in employment as a security guard during his off-duty hours, provided that he does not advertise his services or solicit employment and further provided that the chief of his department previously approves the off-duty employment. A peace officer or reserve officer so engaged in casual employment is exempt from the provisions of this chapter only if the casual employment is authorized in writing by his sheriff or chief of police.

History: En. Sec. 29, Ch. 550, L. 1983; amd. Sec. 15, Ch. 63, L. 1987.

37-60-407. Regulation of uniforms, badges, and equipment. (1) No licensee or officer, director, partner, manager, or employee of a licensee may wear, carry, or display a badge in connection with the activities of the licensee's business.

(2) The board is authorized to establish rules regulating uniforms and any emblems, patches, insignias, and devices that may be either worn or displayed on uniforms, vehicles, or equipment.

History: En. Sec. 30, Ch. 550, L. 1983; amd. Sec. 16, Ch. 63, L. 1987.

Cross-References

Impersonating a public servant, 45-7-209.

37-60-408. Restrictions on use of certain automatic dial-up systems. No person may install or use a security alarm system designed to automatically call a predetermined law enforcement telephone number without written permission from the chief law enforcement officer of the local government in which the alarm system is installed.

History: En. Sec. 1, Ch. 240, L. 1985.

37-60-409. Installation of new security alarm systems by electrician. An electrician who has received a license from the department pursuant to 37-68-301 may install new security alarm systems under the direction of a journeyman security alarm installer, but such work performed by an electrician is subject to inspection and approval by a security alarm installer licensed under 37-60-303.

History: En. Sec. 9, Ch. 647, L. 1985.

37-60-410 reserved.

37-60-411. Penalties — investigation — enforcement — review. (1) Any person who violates any of the provisions of this chapter or who conspires with another person to violate any of the provisions of this chapter relating to licensure is guilty of a misdemeanor punishable by a fine of not more than $1,000 or by imprisonment of not more than 1 year or by both such fine and imprisonment.

(2) The board shall:

(a) gather evidence of violations of this chapter, and of any rule established pursuant to this chapter, by persons engaged in a business subject to licensure under this chapter who fail to obtain licenses; and

(b) furnish that evidence to prosecuting officers of any county or city.

(3) The prosecuting officer of any county or city shall prosecute all violations of this chapter occurring within his jurisdiction.

(4) (a) If upon investigation the board considers it appropriate, it may issue a citation to a licensee. The citation may contain:

(i) an order of abatement fixing a reasonable time for abatement of the violation; and

(ii) assessment of an administrative fine in an amount not to exceed $500 for each violation of this chapter.

(b) A citation or fine assessment must inform the licensee that if he contests the finding of a violation, a review by the board may be requested in accordance with the Montana Administrative Procedure Act. If a review is not requested pursuant to this section, payment of the fine does not constitute an admission of the violation charged.

(c) If the licensee neither requests a review nor pays the assessed fine within 20 days of notice of the citation, the board shall suspend the license of such person 30 days after the notice of citation.

(d) All fines collected pursuant to this section must be deposited in the state special revenue fund for use of the board.

History: **En. Sec. 31, Ch. 550, L. 1983; amd. Sec. 17, Ch. 63, L. 1987.**

CHAPTER 61

ATTORNEYS AT LAW

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37-61-416. Party may appear in person or by attorney.
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37-61-419. Attorney not to become surety on bond.
37-61-420. Judgment lien for compensation.
37-61-421. Attorney's or litigant's liability for excess costs.

Chapter Cross-References

Power of Supreme Court to make rules governing practice and admission to bar, Art. VII, sec. 2, Mont. Const.

Restrictions on practice of law by judges, Art. VII, sec. 9, Mont. Const.

Licensed attorney — exemption from regulation of escrow business, 32-7-103.

Professional service corporations, Title 35, ch. 4.

Part 1

Licensing Authorities

Part Cross-References

Limited duty of attorney to report violations of Montana Elder Abuse Prevention Act, 53-5-511.

37-61-101. Supreme court may establish rules. The supreme court may establish rules for the admission of attorneys and counselors not inconsistent with this chapter.

History: En. Sec. 396, C. Civ. Proc. 1895; re-en. Sec. 6387, Rev. C. 1907; re-en. Sec. 8942, R.C.M. 1921; re-en. Sec. 8942, R.C.M. 1935; R.C.M. 1947, 93-2007.

Cross-References

Attorneys and counselors-at-law, Rule VI, Rules of the Supreme Court of Montana (see annotation at Art. VII, sec. 2, Mont. Const.).

37-61-102. Attorneys' examining board — appointment, quorum, and powers. (1) The supreme court is hereby authorized and empowered to appoint five members of the bar of this state, in good standing, as an examining board to conduct and assist in conducting the examination of applicants for admission to the bar. The court may release, dismiss, or remove any member of said board and appoint other members in his or their stead at any time.

(2) A majority of said board shall constitute a quorum and have the power to conduct examinations.

(3) The board shall perform such duties and render such assistance in the examinations of applicants as may be prescribed by the court and shall be governed and controlled by such rules as the court may prescribe. It shall be optional with the supreme court to appoint said board or to require the assistance of said board when appointed.

History: En. Sec. 5, Ch. 90, L. 1917; re-en. Sec. 8948, R.C.M. 1921; re-en. Sec. 8948, R.C.M. 1935; R.C.M. 1947, 93-2013.

Cross-References

Attorneys and counselors-at-law, Rule VI, Rules of the Supreme Court of Montana (see annotation at Art. VII, sec. 2, Mont. Const.).

37-61-103. Compensation and expenses of members of board. The members of said board shall be entitled to their travel expenses in attending meetings of said board and in conducting such examination and also when away from their homes or places of residence, as provided for in 2-18-501 through 2-18-503, and shall be paid such compensation for services performed by them as members of said board as may be fixed and determined by the supreme court.

History: En. Sec. 6, Ch. 90, L. 1917; re-en. Sec. 8949 R.C.M. 1921; re-en. Sec. 8949, R.C.M. 1935; amd. Sec. 82, Ch. 147, L. 1963; amd. Sec. 63, Ch. 439, L. 1975; R.C.M. 1947, 93-2014.

Part 2

Licensing

Part Cross-References

Attorneys and counselors-at-law, Rule VI, Rules of the Supreme Court of Montana (see annotation at Art. VII, sec. 2, Mont. Const.).

Licensing to follow contested case procedure, 2-4-631.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-61-201. Who considered to be practicing law. Any person who shall hold himself out or advertise as an attorney or counselor at law or who shall appear in any court of record or before a judicial body, referee, commissioner, or other officer appointed to determine any question of law or fact by a court or who shall engage in the business and duties and perform such acts, matters, and things as are usually done or performed by an attorney at law in the practice of his profession for the purposes of parts 1 through 3 of this chapter shall be deemed practicing law.

History: En. Sec. 1, Ch. 90, L. 1917; re-en. Sec. 8944, R.C.M. 1921; re-en. Sec. 8944, R.C.M. 1935; R.C.M. 1947, 93-2009.

37-61-202. Who may be admitted as attorney. Any citizen or person, resident of this state, who has bona fide declared his or her intention to become a citizen in the manner required by law, of good moral character, and who possesses the necessary qualifications of learning and ability is entitled to admission as attorney and counselor in all the courts of this state.

History: En. Sec. 390, C. Civ. Proc. 1895; re-en. Sec. 6381, Rev. C. 1907; re-en. Sec. 8936, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 275; re-en. Sec. 8936, R.C.M. 1935; amd. Sec. 11, Ch. 168, L. 1971; R.C.M. 1947, 93-2001(part).

Cross-References

Rules for determining residence, 1-1-215.

37-61-203. Clerk, sheriff, or coroner may not practice law. The clerk, deputy clerk, sheriff, undersheriff, deputy sheriff, or coroner must not, during his continuance in office, practice as attorney and counselor in any court.

History: En. Sec. 429, C. Civ. Proc. 1895; re-en. Sec. 6421, Rev. C. 1907; re-en. Sec. 8992, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 171; re-en. Sec. 8992, R.C.M. 1935; R.C.M. 1947, 93-2119.

Cross-References

Practice of law by Workers' Compensation Judge unlawful, 2-15-1014.

Certain officers not to practice law, 3-1-601.

Restrictions on practice of law by certain officers, 7-4-2210.

37-61-204. Qualifications, examination, and admission. Each applicant for admission as an attorney and counselor must produce satisfactory testimonials of good moral character and a certificate of one or more reputable counselors at law that he has been engaged in the study of law for 2 successive years prior to the making of such application and undergo a strict examination as to his qualifications by any one or more of the justices of the supreme court. The form and manner of the examination shall be as the justices may from time to time determine. However, a diploma from the university of Montana law school at Missoula or other evidence of having completed the 3-year course in law of that school entitles the holder to a license to practice law in all the courts of this state, subject to the right of the chief justice of the supreme court to order an examination as in ordinary cases of applicants without such diploma or evidence.

History: En. Sec. 391, C. Civ. Proc. 1895; re-en. Sec. 6382, Rev. C. 1907; amd. Sec. 1, Ch. 18, L. 1915; re-en. Sec. 8937, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 276; re-en. Sec. 8937, R.C.M. 1935; amd. Sec. 35, Ch. 101, L. 1977; R.C.M. 1947, 93-2002.

Cross-References

Attorneys and counselors-at-law, Rule VI, Rules of the Supreme Court of Montana (see annotation at Art. VII, sec. 2, Mont. Const.).

37-61-205. Application and examination fees. (1) Every applicant for admission to the bar must pay to the clerk of the supreme court at the time he files his application for admission a fee commensurate with the cost of processing the application as determined by the supreme court.

(2) In addition to the fee provided for in subsection (1), the supreme court may charge an examination fee commensurate with the cost of administering the bar examination.

(3) All money collected from fees herein provided for shall be deposited with the state treasurer by the clerk of the supreme court and placed in the general fund.

History: En. Sec. 7, Ch. 90, L. 1917; re-en. Sec. 8950, R.C.M. 1921; re-en. Sec. 8950, R.C.M. 1935; amd. Sec. 83, Ch. 147, L. 1963; R.C.M. 1947, 93-2015; amd. Sec. 1, Ch. 220, L. 1983.

Cross-References

Disposition of fees, 3-2-404.

Contribution of fees to judges' retirement fund, 19-5-404.

37-61-206. Certificate of admission and license. If upon examination he is found qualified, the supreme court must admit him as an attorney and counselor in all the courts of this state and must direct an order to be entered to that effect upon its records, and that a certificate of such record be given to him by the clerk of the court, which certificate is his license.

History: En. Sec. 392, C. Civ. Proc. 1895; re-en. Sec. 6383, Rev. C. 1907; re-en. Sec. 8938, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 277; re-en. Sec. 8938, R.C.M. 1935; R.C.M. 1947, 93-2003.

Cross-References

Clerk to charge fee for certificate of admission, 3-2-403.

37-61-207. Oath. Every person on his admission must take an oath to support the Constitution of the United States and The Constitution of the

State of Montana and to faithfully discharge the duties of an attorney and counselor at law with fidelity to the best of his knowledge and ability. A certificate of such oath must be endorsed upon the license and a duplicate filed with the clerk.

History: En. Sec. 393, C. Civ. Proc. 1895; re-en. Sec. 6384, Rev. C. 1907; re-en. Sec. 8939, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 278; re-en. Sec. 8939, R.C.M. 1935; R.C.M. 1947, 93-2004.

Cross-References

Oath defined, 1-1-201.

Oaths, Title 1, ch. 6.

37-61-208. Admission of attorneys from other states. Every citizen of the United States or person resident of this state who has bona fide declared his or her intention to become a citizen in the manner required by law who has been admitted to practice law in the highest courts of another state or of a foreign country where the common law of England constitutes the basis of jurisprudence may be admitted to practice in the courts of this state upon the production of his or her license and satisfactory evidence of good moral character, but the court may examine the applicant as to his or her qualifications. However, any person who is a nonresident of the state of Montana and who has been admitted and is at the time authorized to practice law in the highest courts of another state or of a foreign country may, upon motion of any attorney admitted to practice in the courts of this state, be permitted by the court to appear as attorney in any action or proceeding in such court and shall, when so permitted, be entitled to the same rights and privileges and be subject to the same duties and obligations with respect to such actions or proceedings as an attorney duly admitted to practice in the courts of this state.

History: En. Sec. 394, C. Civ. Proc. 1895; re-en. Sec. 6385, Rev. C. 1907; amd. Sec. 1, Ch. 13, L. 1911; re-en. Sec. 8940, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 279; re-en. Sec. 8940, R.C.M. 1935; R.C.M. 1947, 93-2005.

Cross-References

Applicability of common law, 1-1-108.

Common law of England — when rule of decision, 1-1-109.

Rules for determining residence, 1-1-215.

Citizenship, Title 1, ch. 1, part 4.

Civil action — form and commencement, Title 25, ch. 1, part 1.

37-61-209. Roll of attorneys. The clerk of the supreme court must keep a roll of the attorneys and counselors admitted to practice, which must be signed by the person admitted before he receives his license.

History: En. Sec. 395, C. Civ. Proc. 1895; re-en. Sec. 6386, Rev. C. 1907; re-en. Sec. 8941, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 280; re-en. Sec. 8941, R.C.M. 1935; R.C.M. 1947, 93-2006.

Cross-References

Duty of Clerk of Supreme Court to keep a roll of attorneys, 3-2-402.

37-61-210. Penalty for practicing without license. If any person practices law in any court, except a justice's court or a city court, without having received a license as attorney and counselor, he is guilty of a contempt of court.

History: En. Sec. 397, C. Civ. Proc. 1895; re-en. Sec. 6388, Rev. C. 1907; re-en. Sec. 8943, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 281; re-en. Sec. 8943, R.C.M. 1935; R.C.M. 1947, 93-2008.

Cross-References

Contempts, Title 3, ch. 1, part 5.

Justices' Courts, Title 3, ch. 10.

City Courts, Title 3, ch. 11.

Procedure in Justices' Courts, Title 25, ch. 31.

Procedure in City Courts, Title 25, ch. 32.

Payment of attorneys' fees to unlicensed persons forbidden, 37-61-215.

37-61-211. Annual license tax — municipal tax prohibited. (1) Every attorney or counselor at law admitted by the supreme court of the state to practice his profession within the state is required to pay a license tax of $25 a year. The tax is payable to and collected by the clerk of the supreme court on or before April 1 of each year.

(2) Upon the payment of the tax, the clerk shall issue and deliver a certificate to the person paying the tax, certifying to the payment of the license tax and stating the period covered by the payment.

(3) A license tax may not be imposed upon attorneys by a municipality or any other subdivision of the state.

History: En. Sec. 2, Ch. 90, L. 1917; re-en. Sec. 8945, R.C.M. 1921; re-en. Sec. 8945, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1961; R.C.M. 1947, 93-2010; amd. Sec. 1, Ch. 379, L. 1989.

Compiler's Comments

1989 Amendment: In (1) increased annual tax from $10 to $25; and made minor changes in style and grammar. Amendment effective January 1, 1990.

Applicability: Section 2, Ch. 379, L. 1989, provided: "[This act] is effective January 1, 1990, and applies to license tax for years beginning after December 31, 1989."

Cross-References

Disposition of fees, 3-2-404.

Contribution of fees to Judges' Retirement Fund, 19-5-404.

37-61-212. Collection of delinquent license tax. If any practicing attorney or counselor at law shall fail, neglect, or refuse to pay to the clerk of the supreme court the license tax imposed by this chapter for a period of 30 days after the same is due and payable, it shall be the duty of the clerk of the supreme court to take such action for the collection of the same as is required of the county treasurer in cases of nonpayment of other licenses, as provided by 7-21-2116, and the provisions of 7-21-2115 through 7-21-2117 shall control in said proceedings so far as the same are applicable thereto.

History: En. Sec. 16, Ch. 90, L. 1917; re-en. Sec. 8959, R.C.M. 1921; re-en. Sec. 8959, R.C.M. 1935; R.C.M. 1947, 93-2024.

37-61-213. Disposition of license tax. All moneys so collected during any month shall, on or before the first day of the succeeding month, be delivered to and deposited with the state treasurer by the clerk of the supreme court, and the state treasurer shall deposit such moneys in the general fund.

History: En. Sec. 3, Ch. 90, L. 1917; re-en. Sec. 8946, R.C.M. 1921; re-en. Sec. 8946, R.C.M. 1935; amd. Sec. 81, Ch. 147, L. 1963; R.C.M. 1947, 93-2011.

Cross-References

Disposition of fees, 3-2-404.

Contributions of fees to Judges' Retirement Fund, 19-5-404.

37-61-214. Penalty for practicing without certificate indicating payment of tax. No attorney shall practice or be permitted to practice his profession in any of the courts of record in this state until he shall have paid such license tax for the current fiscal year and procured a certificate, as hereinabove provided, and any attorney violating this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than $25.

History: En. Sec. 4, Ch. 90, L. 1917; re-en. Sec. 8947, R.C.M. 1921; re-en. Sec. 8947, R.C.M. 1935; R.C.M. 1947, 93-2012.

37-61-215. Allowance of attorneys' fees to unlicensed persons forbidden. It shall be unlawful for any court within this state to allow attorneys' fees in any action or proceeding before said court in which attorneys' fees are allowed by law to either party to such action or proceeding when such party is represented by anyone other than a duly admitted or licensed attorney at law.

History: En. Sec. 15, Ch. 90, L. 1917; re-en. Sec. 8958, R.C.M. 1921; re-en. Sec. 8958, R.C.M. 1935; R.C.M. 1947, 93-2023.

Part 3

Disbarment and Suspension

Part Cross-References

Orders of the Supreme Court relating to the Commission on Practice, see annotation at Art. VII, sec. 2, Mont. Const.

Rules of the Commission on Practice, see annotation at Art. VII, sec. 2, Mont. Const.

Guidelines for local grievance committee procedure, see annotation at Art. VII, sec. 2, Mont. Const.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

37-61-301. Disbarment. (1) The supreme court of the state shall have exclusive jurisdiction to remove or suspend attorneys and counselors at law.

(2) An attorney and counselor may be removed or suspended for any of the following causes arising after his admission to practice:

(a) his conviction of a felony or misdemeanor involving moral turpitude, in which case the record of conviction is conclusive evidence;

(b) willful disobedience or violation of an order of the court requiring him to do or forbear an act connected with or in the course of his profession which he ought in good faith to do or forbear and any violation of the oath taken by him or of his duties as such attorney and counselor;

(c) corruptly or willfully and without authority appearing as attorney for a party to an action or proceeding;

(d) lending his name to be used as attorney and counselor by another person who is not an attorney and counselor;

(e) being guilty of deceit, malpractice, crime, or misdemeanor involving moral turpitude.

History: En. Sec. 402, C. Civ. Proc. 1895; amd. Sec. 1, Ch. 36, L. 1903; re-en. Sec. 6393, Rev. C. 1907; re-en. Sec. 8961, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 287; re-en. Sec. 8961, R.C.M. 1935; R.C.M. 1947, 93-2026(part).

37-61-302. Record of conviction. In case of the conviction of an attorney and counselor of a felony or misdemeanor involving moral turpitude, the clerk of the court in which such conviction is had shall, within 30 days thereafter, transmit to the supreme court a certified copy of the record of conviction.

History: En. Sec. 417, C. Civ. Proc. 1895; re-en. Sec. 6409, Rev. C. 1907; re-en. Sec. 8962, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 288; re-en. Sec. 8962, R.C.M. 1935; R.C.M. 1947, 93-2027.

37-61-303. Proceedings required on receipt of record of conviction. The proceedings to remove or suspend an attorney and counselor under 37-61-301(2)(a) must be taken by the court on the receipt of a certified copy of the record of conviction. The proceedings under the subsections (2)(b), (2)(c), or (2)(d) of 37-61-301 may be taken by the court for the matters within its knowledge or may be taken upon the information of another.

History: En. Sec. 418, C. Civ. Proc. 1895; re-en. Sec. 6410, Rev. C. 1907; re-en. Sec. 8963, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 289; re-en. Sec. 8963, R.C.M. 1935; R.C.M. 1947, 93-2028.

37-61-304. Repealed. Sec. 1, Ch. 388, L. 1983.

History: En. Sec. 8, Ch. 90, L. 1917; re-en. Sec. 8951, R.C.M. 1921; re-en. Sec. 8951, R.C.M. 1935; R.C.M. 1947, 93-2016.

37-61-305. Repealed. Sec. 1, Ch. 388, L. 1983.

History: En. Sec. 9, Ch. 90, L. 1917; re-en. Sec. 8952, R.C.M. 1921; re-en. Sec. 8952, R.C.M. 1935; R.C.M. 1947, 93-2017.

37-61-306. Repealed. Sec. 1, Ch. 388, L. 1983.

History: En. Sec. 10, Ch. 90, L. 1917; re-en. Sec. 8953, R.C.M. 1921; re-en. Sec. 8953, R.C.M. 1935; R.C.M. 1947, 93-2018.

37-61-307. Supreme court to make procedural rules — referees. (1) The supreme court may make rules regulating pleadings, practice, and procedure in such action or proceeding; and in the absence of such rules, the law relating to pleadings, practice, and procedure in civil actions, so far as applicable, shall control.

(2) The court may order a reference as authorized by Rule 53, M.R.Civ.P.; and in the event of a reference, the referee or referees shall have the powers provided in such rule and shall receive such compensation as shall be fixed and allowed by the supreme court.

History: En. Sec. 11, Ch. 90, L. 1917; re-en. Sec. 8954, R.C.M. 1921; re-en. Sec. 8954, R.C.M. 1935; R.C.M. 1947, 93-2019.

Cross-References

Orders of the Supreme Court relating to the Commission on Practice, see annotation at Art. VII, sec. 2, Mont. Const.

Rules of the Commission on Practice, see annotation at Art. VII, sec. 2, Mont. Const.

Guidelines for local grievance committee procedure, see annotation at Art. VII, sec. 2, Mont. Const.

Pleadings, motions, and other papers, Title 25, ch. 4.

Trials, Title 25, ch. 7.

Montana Rules of Civil Procedure, Title 25, ch. 20.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

37-61-308. Witness fees and expenses. Witnesses on behalf of the complainant in any such action or proceeding shall be entitled to the fees and mileage provided by law for witnesses in civil actions in the district court.

History: En. Sec. 12, Ch. 90, L. 1917; re-en. Sec. 8955, R.C.M. 1921; re-en. Sec. 8955, R.C.M. 1935; amd. Sec. 84, Ch. 147, L. 1963; R.C.M. 1947, 93-2020.

Cross-References

Mileage allowance, 2-18-503.

Witness fees, Title 26, ch. 2, part 5.

37-61-309. Judgment. Upon conviction, in cases arising under 37-61-301(2)(a), the judgment of the court must be that the name of the party be stricken from the roll of attorneys and counselors of the court and that he be precluded from practicing as such attorney or counselor in all the courts of this state. Upon conviction in cases under the other subsections of that section, the judgment of the court may be, according to the gravity of the offense charged, deprivation of the right to practice as attorney or counselor in the courts of this state permanently or for a limited period.

History: En. Sec. 428, C. Civ. Proc. 1895; re-en. Sec. 6420, Rev. C. 1907; re-en. Sec. 8973, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 299; re-en. Sec. 8973, R.C.M. 1935; R.C.M. 1947, 93-2038.

Cross-References

Duty of Clerk of Supreme Court to keep roll of attorneys, 3-2-402, 37-61-209.

Part 4

Provisions Regulating Practice

37-61-401. Authority of attorney. (1) An attorney and counselor has authority to:

(a) bind his client in any steps of an action or proceeding by his agreement filed with the clerk or entered upon the minutes of the court and not otherwise;

(b) receive money claimed by his client in an action or proceeding during the pendency thereof or after judgment unless a revocation of his authority is filed and, upon the payment thereof and not otherwise, to discharge the claim or acknowledge satisfaction of the judgment.

(2) The death of a party to an action or proceeding does not revoke the authority of his attorney of record in said action or proceeding, but the authority of the attorney is continued in all respects the same and with like effect as it was prior to the death of such party until such attorney shall withdraw his appearance in said action or proceeding or some other attorney shall be substituted for him or his authority shall be otherwise terminated and entry thereof made to appear in the record of such action or proceeding.

History: En. Sec. 398, C. Civ. Proc. 1895; re-en. Sec. 6389, Rev. C. 1907; amd. Sec. 1, Ch. 35, L. 1915; re-en. Sec. 8974, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 283; re-en. Sec. 8974, R.C.M. 1935; R.C.M. 1947, 93-2101.

37-61-402. Production of proof of authority to court. The court or judge, on motion of either party, may require the attorney of the adverse party to produce and prove the authority under which he appears and may stay all proceedings until such is shown and may at any time summarily relieve a party from the consequences of the acts of an unauthorized attorney.

History: En. Sec. 431, C. Civ. Proc. 1895; re-en. Sec. 6423, Rev. C. 1907; re-en. Sec. 8994, R.C.M. 1921; re-en. Sec. 8994, R.C.M. 1935; R.C.M. 1947, 93-2121.

37-61-403. Change of attorney. The attorney in an action or special proceeding may be changed at any time before or after judgment or final determination, as follows:

(1) upon consent of both client and attorney, filed with the clerk or entered upon the minutes;

(2) upon the order of the court, upon the application of either client or attorney, after notice from one to the other.

History: En. Sec. 399, C. Civ. Proc. 1895; re-en. Sec. 6390, Rev. C. 1907; re-en. Sec. 8975, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 284; re-en. Sec. 8975, R.C.M. 1935; R.C.M. 1947, 93-2102.

37-61-404. Notice of change. When an attorney is changed as provided in 37-61-403, written notice of the change and the substitution of a new attorney or of the appearance of the party in person must be given to the adverse party. Until then he must recognize the former attorney.

History: En. Sec. 400, C. Civ. Proc. 1895; re-en. Sec. 6391, Rev. C. 1907; re-en. Sec. 8976, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 285; re-en. Sec. 8976, R.C.M. 1935; R.C.M. 1947, 93-2103.

37-61-405. Death or removal of attorney. When an attorney dies or is removed or suspended or ceases to act as such, a party to an action for whom he was acting as attorney must, before any further proceedings are had against him, be required by the adverse party, by written notice, to appoint another attorney or appear in person.

History: En. Sec. 401, C. Civ. Proc. 1895; re-en. Sec. 6392, Rev. C. 1907; re-en. Sec. 8977, R.C.M. 1921; Cal. C. Civ. Proc. Sec. 286; re-en. Sec. 8977, R.C.M. 1935; R.C.M. 1947, 93-2104.

Cross-References

Service of notice of appeal upon death of attorney, Rule 4, M.R.App.P. (see Title 25, ch. 21).

37-61-406. Penalty for deceit. An attorney or counselor who is guilty of any deceit or collusion or consents to any deceit or collusion with intent to deceive the court or a party forfeits to the party injured by his deceit or collusion treble damages. He is also guilty of a misdemeanor.

History: En. Sec. 403, C. Civ. Proc. 1895; re-en. Sec. 6395, Rev. C. 1907; re-en. Sec. 8978, R.C.M. 1921; Cal. Pen. C. Sec. 160; re-en. Sec. 8978, R.C.M. 1935; R.C.M. 1947, 93-2105.

Cross-References

Misdemeanor penalty when none specified, 46-18-212.

37-61-407. Penalty for delay. An attorney and counselor who willfully delays his client's cause with a view to his own gain or willfully receives money or an allowance for or on account of money which he has not laid out or become answerable for forfeits to the party injured treble damages.

History: En. Sec. 404, C. Civ. Proc. 1895; re-en. Sec. 6396, Rev. C. 1907; re-en. Sec. 8979, R.C.M. 1921; Cal. Pen. C. Sec. 160; re-en. Sec. 8979, R.C.M. 1935; R.C.M. 1947, 93-2106.

Cross-References

"Willfully" defined, 1-1-204.

Damages for appeal without merit, Rule 32, M.R.App.P. (see Title 25, ch. 21).

37-61-408. Attorney prohibited from acquiring claim or demand for purpose of bringing action. (1) An attorney and counselor must not directly or indirectly buy or be in any manner interested in buying a bond, promissory note, bill of exchange, book debt, or other thing in action with the intent and for the purpose of bringing an action thereon.

(2) An attorney and counselor must not, by himself or by or in the name of another person, either before or after action brought, promise or give or procure to be promised or given a valuable consideration to any person as an inducement to placing or in consideration of having placed in his hands or in the hands of another person a demand of any kind for the purpose of bringing an action thereon. This subsection does not apply to an agreement between attorneys and counselors, or either, to divide between themselves the compensation to be received.

History: (1)En. Sec. 405, C. Civ. Proc. 1895; re-en. Sec. 6397, Rev. C. 1907; re-en. Sec. 8980, R.C.M. 1921; Cal. Pen. C. Sec. 161; re-en. Sec. 8980, R.C.M. 1935; Sec. 93-2107, R.C.M. 1947; (2)En. Sec. 406, C. Civ. Proc. 1895; re-en. Sec. 6398, Rev. C. 1907; re-en. Sec. 8981, R.C.M. 1921; re-en. Sec. 8981, R.C.M. 1935; Sec. 93-2108, R.C.M. 1947; R.C.M. 1947, 93-2107, 93-2108(part).

37-61-409. Penalty for violation. An attorney and counselor who violates 37-61-408 is guilty of a misdemeanor and on conviction thereof shall be punished accordingly and must be removed from office by the supreme court.

History: En. Sec. 406, C. Civ. Proc. 1895; re-en. Sec. 6398, Rev. C. 1907; re-en. Sec. 8981, R.C.M. 1921; re-en. Sec. 8981, R.C.M. 1935; R.C.M. 1947, 93-2108(part); amd. Sec. 23, Ch. 22, L. 1979.

Cross-References
Misdemeanor penalty when none specified, 46-18-212.

37-61-410. Limitation. Sections 37-61-407 through 37-61-409 do not prohibit the receipt by an attorney or counselor of a bond, promissory note, bill of exchange, book debt, or other thing in action in payment for property sold or for services actually rendered or for a debt antecedently contracted or from buying or receiving a bill of exchange, draft, or other thing in action for the purpose of remittance and without intent to violate any of those sections.

History: En. Sec. 407, C. Civ. Proc. 1895; re-en. Sec. 6399, Rev. C. 1907; re-en. Sec. 8982, R.C.M. 1921; re-en. Sec. 8982, R.C.M. 1935; R.C.M. 1947, 93-2109.

37-61-411. Same rule when party prosecutes in person. Sections 37-61-407 through 37-61-410 apply to a person prosecuting an action in person who does an act which an attorney and counselor is therein forbidden to do.

History: En. Sec. 408, C. Civ. Proc. 1895; re-en. Sec. 6400, Rev. C. 1907; re-en. Sec. 8983, R.C.M. 1921; re-en. Sec. 8983, R.C.M. 1935; R.C.M. 1947, 93-2110.

37-61-412. Partner of public prosecutor not to defend. An attorney and counselor must not directly or indirectly advise concerning, aid, or take any part in the defense of an action or special proceeding, civil or criminal, brought, carried on, aided, advocated, or prosecuted, as attorney general, county attorney, or other public prosecutor, by a person with whom he is interested or connected, either directly or indirectly, as a law partner; or take or receive, directly or indirectly, from a defendant therein or other person a fee, gratuity, or reward for or upon any cause, consideration, pretense, understanding, or agreement whatever, express or implied, having relation thereto or to the prosecution or defense thereof.

History: En. Sec. 409, C. Civ. Proc. 1895; re-en. Sec. 6401, Rev. C. 1907; re-en. Sec. 8984, R.C.M. 1921; Cal. Pen. C. Sec. 162; re-en. Sec. 8984, R.C.M. 1935; R.C.M. 1947, 93-2111.

Cross-References
Standards of conduct, Title 2, ch. 2.
Limitations on activities of County Attorneys and Deputy County Attorneys, 7-4-2704.

37-61-413. Former public prosecutors not to defend. An attorney and counselor who has brought, carried on, aided, advocated, or prosecuted or has been in anywise connected with an action or special proceeding, civil or criminal, as attorney general, county attorney, or other public prosecutor, must not, at any time thereafter, directly or indirectly advise concerning, aid, or take any part in the defense thereof; or take or receive, either directly or indirectly, from a defendant therein or other person a fee, gratuity, or reward for or upon any cause, consideration, pretense, understanding, or agreement, either express or implied, having relation thereto or to the prosecution or defense thereof.

History: En. Sec. 410, C. Civ. Proc. 1895; re-en. Sec. 6402, Rev. C. 1907; re-en. Sec. 8985, R.C.M. 1921; Cal. Pen. C. Sec. 162; re-en. Sec. 8985, R.C.M. 1935; R.C.M. 1947, 93-2112.

Cross-References
Standards of conduct, Title 2, ch. 2.
Limitations on activities of County Attorneys and Deputy County Attorneys, 7-4-2704.

37-61-414. Partners not to appear on opposite sides. Whenever a law partnership or any member thereof accepts employment to prosecute or defend any action, civil or criminal, or to advise in relation thereto, no member of said partnership is permitted, then or afterward, to act as attorney or counselor on the side opposite to that upon which such original employment was had. This section does not prevent a person who has been employed as attorney and counselor in an action or proceeding before becoming a member of a partnership from appearing and acting therein until its completion.

History: En. Sec. 411, C. Civ. Proc. 1896; Re-en. Sec. 6403, Rev. C. 1907; re-en. Sec. 8986, R.C.M. 1921; re-en. Sec. 8986, R.C.M. 1935; R.C.M. 1947, 93-2113.

37-61-415. Penalty for violation of two preceding sections. An attorney and counselor who violates either 37-61-413 or 37-61-414 is guilty of a misdemeanor and on conviction thereof shall be punished accordingly and must be removed from office by the supreme court.

History: En. Sec. 412, C. Civ. Proc. 1895; re-en. Sec. 6404, Rev. C. 1907; re-en. Sec. 8987, R.C.M. 1921; re-en. Sec. 8987, R.C.M. 1935; R.C.M. 1947, 93-2114.

Cross-References

Misdemeanor penalty when none specified, 46-18-212.

37-61-416. Party may appear in person or by attorney. A party to a civil action who is of full age may prosecute or defend the same in person or by attorney at his election unless he has been judicially declared to be incompetent to manage his affairs. Each provision of this part relating to the conduct of an action wherein the attorney for the party is mentioned includes a party prosecuting or defending in person unless otherwise specially prescribed therein or unless that construction is manifestly repugnant to the context. If a party has an attorney in the action, he cannot appear or act in person where an attorney may appear or act either by special provisions of law or by the course and practice of the court.

History: En. Sec. 413, C. Civ. Proc. 1895; re-en. Sec. 6405, Rev. C. 1907; re-en. Sec. 8988, R.C.M. 1921; re-en. Sec. 8988, R.C.M. 1935; R.C.M. 1947, 93-2115.

37-61-417. Attorney may defend in person. This part does not prohibit an attorney or counselor from defending himself in person if prosecuted either civilly or criminally.

History: En. Sec. 414, C. Civ. Proc. 1895; re-en. Sec. 6406, Rev. C. 1907; re-en. Sec. 8989, R.C.M. 1921; Cal. Pen. C. Sec. 163; re-en. Sec. 8989, R.C.M. 1935; R.C.M. 1947, 93-2116.

37-61-418. Attorney may see prisoner. All public officers, sheriffs, coroners, jailers, constables, or other officers or persons having in custody any person committed, imprisoned, or restrained of his liberty for any alleged cause whatever must admit any practicing attorney and counselor at law in this state whom such person restrained of his liberty may desire to see or consult, to see and consult such person so imprisoned, alone and in private, at the jail or other place of custody. Any officer violating this provision shall forfeit and pay $100 to the person aggrieved, to be recovered by action of debt in any court of competent jurisdiction.

History: En. Sec. 13, p. 373, Bannack Stat.; re-en. Sec. 13, p. 378, Cod. Stat. 1871; re-en. Sec. 52, 5th Div. Rev. Stat. 1879; re-en. Sec. 114, 5th Div. Comp. Stat. 1887; re-en. Sec. 415, C. Civ. Proc. 1895; re-en. Sec. 6407, Rev. C. 1907; re-en. Sec. 8990, R.C.M. 1921; re-en. Sec. 8990, R.C.M. 1935; R.C.M. 1947, 93-2117.

37-61-419. Attorney not to become surety on bond. (1) Without the consent of the district court judge who had first approved the security, no attorney and counselor at law shall become security in any bond or recognizance of any sheriff, constable, or coroner or upon any bond, undertaking, or recognizance authorized by any statute, to be taken for the payment of any sum of money into court in default of the principal.

(2) No attorney at law may act as surety for bail or furnish bail.

History: En. Sec. 14, p. 373, Bannack Stat.; re-en. Sec. 14, p. 378, Cod. Stat. 1871; re-en. Sec. 53, 5th Div. Rev. Stat. 1879; re-en. Sec. 115, 5th Div. Comp. Stat. 1887; re-en. Sec. 416, C. Civ. Proc. 1895; re-en. Sec. 6408, Rev. C. 1907; re-en. Sec. 8991, R.C.M. 1921; re-en. Sec. 8991, R.C.M. 1935; R.C.M. 1947, 93-2118; amd. Sec. 164, Ch. 575, L. 1981.

Cross-References
Bail, Title 46, ch. 9.

37-61-420. Judgment lien for compensation. (1) The compensation of an attorney and counselor for his services is governed by agreement, express or implied, which is not restrained by law.

(2) From the commencement of an action or the service of an answer containing a counterclaim, the attorney who appears for a party has a lien upon his client's cause of action or counterclaim which attaches to a verdict, report, decision, or judgment in his client's favor and the proceeds thereof in whose hands they may come. Such lien cannot be affected by any settlement between the parties before or after judgment.

History: En. Sec. 430, C. Civ. Proc. 1895; re-en. Sec. 6422, Rev. C. 1907; re-en. Sec. 8993, R.C.M. 1921; re-en. Sec. 8993, R.C.M. 1935; R.C.M. 1947, 93-2120.

Cross-References
Judgment, Title 25, ch. 9.
Attorneys' fees, Title 25, ch. 10, part 3.
Execution of judgment, Title 25, ch. 13.
Liens of physicians, nurses, and hospitals, 71-3-1114.

37-61-421. Attorney's or litigant's liability for excess costs. An attorney or party to any court proceeding who, in the determination of the court, multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorney fees reasonably incurred because of such conduct.

History: En. Sec. 1, Ch. 533, L. 1985.

CHAPTER 62

POLYGRAPH EXAMINERS

Part 1 — General

37-62-101. Definitions.
37-62-102. Powers and duties of department.

Part 2 — Licensing

37-62-201. License required.
37-62-202. Issuance of examiner's license with examination.
37-62-203. Issuance of examiner's license — reciprocity.
37-62-204. Terms of license — renewal.
37-62-205. Form of license — display of license.
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37-62-301. Minimum standards for instruments or devices.
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37-62-304 through 37-62-310 reserved.
37-62-311. Penalty.

Chapter Cross-References

Lie detector tests prohibited, 39-2-304.

Part 1

General

37-62-101. Definitions. In this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(2) "Examinee" means an individual who is being examined, tested, or questioned by an examiner for the purpose of detecting deception or verifying truthfulness.

(3) "Examiner" means any person who:

(a) purports to be able to detect deception, verify truthfulness, or provide a diagnostic opinion of deception or truthfulness through the use of a mechanical device or instrument;

(b) represents that he can or does offer the service of detecting deception, verifying truthfulness, or providing a diagnostic opinion of deception or truthfulness through the use of a mechanical device or instrument; or

(c) uses a mechanical device or instrument to measure or record an individual's bodily responses or psychophysiological activities to enable or assist the detection of deception, the verification of truthfulness, or the reporting of a diagnostic opinion regarding deception or truthfulness.

(4) "Internship" means the study of polygraphs and the administration of polygraph examinations by a trainee under the personal supervision and control of a licensed polygraph examiner.

History: En. Sec. 1, Ch. 185, L. 1983; amd. Sec. 1, Ch. 547, L. 1985.

37-62-102. Powers and duties of department. The department shall:

(1) administer and enforce the provisions of this chapter;

(2) adopt rules in accordance with the Montana Administrative Procedure Act to carry out the provisions of this chapter; and

(3) investigate all complaints concerning violations of this chapter unless the department determines that any such complaint is frivolous or otherwise lacking in merit.

History: En. Sec. 3, Ch. 185, L. 1983.

Part 2
Licensing

37-62-201. License required. No person may, unless licensed under the provisions of this chapter:

(1) hold himself out to be an examiner;

(2) use or attempt to use any mechanical device or instrument for the purpose of detecting deception, verifying truthfulness, or reporting a diagnostic opinion regarding deception or truthfulness;

(3) purport to detect deception or verify truthfulness through mechanical devices or instruments; or

(4) advertise or represent that he can or does offer the service of detecting deception, verifying truthfulness, or reporting a diagnostic opinion regarding an individual's deception or truthfulness through mechanical devices or instruments.

History: En. Sec. 4, Ch. 185, L. 1983.

37-62-202. Issuance of examiner's license with examination. Upon application and payment of the required fee, an applicant must be granted a license as an examiner if he:

(1) is at least 18 years old;

(2) is a citizen of the United States;

(3) is of good moral character;

(4) has successfully completed a course in polygraph instruction at an American polygraph association accredited institution;

(5) has a high school diploma from an accredited high school or its equivalent; and

(6) has successfully passed an examination conducted by the department that tests the applicant's general knowledge of the use of the polygraph or a comparable examination conducted by another state whose law requires successful completion of the examination as qualification for a license.

History: En. Sec. 6, Ch. 185, L. 1983.

Cross-References

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-62-203. Issuance of examiner's license — reciprocity. (1) Upon application to the department and payment of the required license fee, a person must be issued an examiner's license if he has satisfied the department by affidavit or otherwise that he meets the minimum requirements for licensing provided in 37-62-202.

(2) Except as provided in subsection (3), an applicant licensed as a polygraph examiner in another state must, upon application to the department and payment of the required license fee, be issued an examiner's license without examination if he satisfies the department by affidavit or otherwise that he:

(a) has legally administered polygraph examinations in the state in which he is licensed for at least 1 year before making application under this subsection; and

(b) meets the requirements for licensing set forth in 37-62-202.

(3) No license may be issued without examination under subsection (2) unless the state in which the applicant is licensed has and maintains licensing requirements substantially equivalent to those provided in this chapter and grants reciprocity to examiners licensed in Montana under terms similar to those provided in this section.

History: **En. Sec. 5, Ch. 185, L. 1983.**

37-62-204. Terms of license — renewal. (1) An examiner's license expires at midnight on March 1 of each year and is renewable only after payment of a renewal fee and proof of compliance with continuing education requirements as provided by 37-62-207.

(2) An examiner whose license has expired may at any time within 2 years after the expiration date obtain a renewal license without examination upon payment of a renewal fee to the department. An examiner whose license expired while he was on active duty in the armed forces of the United States or the national guard may, notwithstanding the provisions of 10-1-605, renew his license without examination within 2 years after discharge from service.

History: **En. Sec. 9, Ch. 185, L. 1983; amd. Sec. 2, Ch. 547, L. 1985.**

37-62-205. Form of license — display of license. (1) A license issued under the provisions of this chapter must be in the form determined by the department and must include:

(a) the name of the examiner;

(b) the name under which the examiner is to operate; and

(c) the number of the license and the date on which the license was issued.

(2) The license must at all times be posted in a conspicuous place in the principal place of business of the examiner.

History: **En. Sec. 10, Ch. 185, L. 1983.**

37-62-206. Pocket card. Upon the issuance of a license, a pocket card of such size, design, and content as determined by the department must be issued without charge to the examiner, which card is evidence that the examiner is duly licensed.

History: **En. Sec. 11, Ch. 185, L. 1983.**

37-62-207. Continuing education. The department shall establish by rule minimum requirements of professional education and training, consistent with the field of learning and with the standards of professional organizations, for renewal of licenses.

History: **En. Sec. 8, Ch. 185, L. 1983.**

37-62-208. Fees. (1) The department shall adopt and charge nonrefundable application, license, and license renewal fees, commensurate with costs in accordance with 37-1-134.

(2) All fees collected by the department under this section must be deposited in the state special revenue fund for the use of the department in administering this chapter.

History: **En. Sec. 7, Ch. 185, L. 1983; amd. Sec. 48, Ch. 281, L. 1983.**

37-62-209. Internship license. (1) Upon application, payment of fees, and approval by the department, a polygraph intern license must be issued to an applicant and is valid for 12 months.

(2) Each licensed intern must be supervised by a licensed polygraph examiner who shall, in accordance with rules established by the department, file reports concerning intern training.

History: En. Sec. 3, Ch. 547, L. 1985.

37-62-210 and 37-62-211 reserved.

37-62-212. Suspension and revocation. An examiner's license may be suspended for a fixed period or may be revoked if, after a hearing before the department, it has been determined by competent evidence that the examiner:

(1) has obtained the license by fraudulent representation;

(2) employs misrepresentation, false promises, or misleading advertising for the purpose of directly or indirectly obtaining business;

(3) is incompetent for any reason to act as an examiner;

(4) has allowed his license to be used by an unlicensed person;

(5) has violated the provisions of this chapter or any rule adopted by the department;

(6) has willfully or negligently aided or abetted another examiner in violating the provisions of this chapter or any rule adopted by the department;

(7) has failed to provide, within a reasonable amount of time, information requested by the department relating to a formal complaint filed with the department involving the examiner;

(8) has been adjudicated by a decree of court to be seriously mentally ill;

(9) has failed to inform the examinee of all specific question areas to be explored before questions are actually asked during an examination;

(10) has conducted an examination without having informed the examinee that:

(a) he has the right to refuse to participate in the examination;

(b) he has the right to halt the examination in progress at any time;

(c) he is not required to answer any questions or give any information; and

(d) any information he volunteers could be used against him or made available to the party requesting the examination unless otherwise agreed to in writing; or

(11) has failed to inform the examinee of the results of an examination if requested.

History: En. Sec. 13, Ch. 185, L. 1983.

Cross-References

Reporting disciplinary actions against licensees, 37-1-105.

Duties of Director, 37-1-121.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-62-213. Hearing. Before refusing an application or suspending or revoking a license, the department shall notify the applicant or examiner by mail not less than 30 days before taking any action. The notice must advise the applicant of the intended action and must include a statement that the applicant or examiner may request a hearing within 20 days of receipt of the notice. If the applicant or examiner requests a hearing within that period, a hearing must be granted, and contested case provisions of the Montana Administrative Procedure Act apply to the hearing. An applicant or examiner who is aggrieved by a final decision in a contested case is entitled to judicial review under the Montana Administrative Procedure Act.

History: **En. Sec. 14, Ch. 185, L. 1983.**

Cross-References

Administrative Procedure Act, Title 2, ch. 4.

Part 3

Miscellaneous Provisions

37-62-301. Minimum standards for instruments or devices. (1) No person may use or attempt to use any instrument or device for the purpose of detecting deception, verifying truthfulness, or assisting in the reporting of a diagnostic opinion as to deception or truthfulness unless the instrument or device, at a minimum, is capable of visually, permanently, and simultaneously recording indications of an examinee's:

(a) cardiovascular pattern;

(b) respiratory pattern; and

(c) galvanic skin response pattern.

(2) Indications of other psychophysiological changes or bodily responses may also be recorded in addition to the minimum standards provided in subsection (1).

(3) The operation, use, or attempted use by an examiner of an instrument or device that does not meet the minimum requirements provided in subsection (1) is subject to the penalties provided in 37-62-311.

History: **En. Sec. 2, Ch. 185, L. 1983.**

37-62-302. Inadmissibility of results as evidence. Results of a polygraph examination or other test given by an examiner may not be introduced or admitted as evidence in a court of law.

History: **En. Sec. 12, Ch. 185, L. 1983.**

Cross-References

Preliminary questions of admissibility, Rule 104, Montana Rules of Evidence (see Title 26, ch. 10).

37-62-303. Pre-test procedure — termination of examination. (1) An examiner may not administer a polygraph examination without first conducting a pre-test interview with the person to be examined. The examinee must be informed of all issues about which he will be examined and which will be reported by the examiner. All questions to be asked during the examination must be written and read verbatim to the examinee during the pre-test interview.

(2) Written, signed, and dated consent must be given by the examinee prior to any polygraph examination.

(3) Upon the request of the examinee, all pre-test procedures or polygraph examinations in progress must terminate immediately. The examiner may, in his discretion, terminate any examination for any reason.

History: **En. Sec. 4, Ch. 547, L. 1985.**

37-62-304 through 37-62-310 reserved.

37-62-311. Penalty. Any person who violates any of the provisions of this chapter is guilty of a misdemeanor and is punishable by a fine of not more than $500 or by imprisonment in the county jail for a period not to exceed 6 months or both such fine and imprisonment.

History: En. Sec. 15, Ch. 185, L. 1983.

CHAPTERS 63 AND 64

RESERVED

CHAPTER 65

ARCHITECTURE

Part 1 — General

37-65-101. Purpose.
37-65-102. Definitions.
37-65-103. Exemptions.

Part 2 — Board of Architects

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37-65-202. Compensation of board members — expenses.
37-65-203. Exclusive licensing jurisdiction — no additional fee.
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Part 3 — Licensing

37-65-301. License required.
37-65-302. Licensure limited to individuals.
37-65-303. Application — examination — issuance of license.
37-65-304. Examination fee — deposit of fee.
37-65-305. Licensing of and solicitation of business by architects from other states.
37-65-306. Annual renewal — fee — continuing education.
37-65-307. Deposit of license fees.
37-65-308. Seal of architect.
37-65-309. Repealed.
37-65-310 through 37-65-320 reserved.
37-65-321. Revocation or suspension of license — grounds — right to notice and hearing.
37-65-322. Penalty.
37-65-323. Injunction.

Chapter Cross-References

Construction contracts, Title 18, ch. 2.

Procurement of architectural, engineering, and land surveying services by governmental entities, Title 18, ch. 8, part 2.

Professional service corporations, Title 35, ch. 4.

Building construction standards, Title 50, ch. 60.

Part 1

General

37-65-101. Purpose. It is hereby declared, as a matter of legislative policy in the state of Montana, that the practice of architecture is a privilege granted by legislative authority and is not a natural right of individuals and that it is necessary, as a matter of such policy and in the interests of the health, safety, and welfare of the people of Montana, to provide laws covering the granting of that privilege and its subsequent use, control, and regulation for the purpose of protecting the public from the unprofessional, improper, unauthorized, and unqualified practice of architecture.

History: En. 66-101.1 by Sec. 1, Ch. 544, L. 1977; R.C.M. 1947, 66-101.1.

37-65-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Architect" means an individual technically and legally qualified to practice architecture and who is authorized under this chapter to practice architecture.

(2) "Board" means the board of architects provided for in 2-15-1871.

(3) "Building" means a structure intended primarily for human occupancy or use.

(4) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(5) "Practice of architecture" means any professional service or creative work requiring the application of advanced knowledge of architectural design, building construction, and standards and involving the constant exercise of discretion and judgment in such activities, in which the safeguarding of life, health, or property is concerned, as consultation, investigation, evaluation, planning, design, or inspection of construction for any public or private building.

(6) "Public building" means any building which the state or any political subdivision thereof maintains for the use of the public.

History: En. Sec. 3, Ch. 158, L. 1917; re-en. Sec. 3231, R.C.M. 1921; re-en. Sec. 3231, R.C.M. 1935; amd. Sec. 1, Ch. 149, L. 1957; amd. Sec. 2, Ch. 439, L. 1973; amd. Sec. 26, Ch. 350, L. 1974; amd. Sec. 2, Ch. 544, L. 1977; R.C.M. 1947, 66-103(2); amd. Sec. 5, Ch. 388, L. 1979; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 490, L. 1983.

37-65-103. Exemptions. (1) Nothing contained in this chapter shall prevent draftsmen, students, clerks of work, superintendents, and other employees of those lawfully practicing as architects under the provisions of this chapter from acting under the instruction, control, or supervision of their employers or to prevent the employment of superintendents of the construction, enlargement, or structural alteration of buildings or any appurtenance thereto.

(2) Nothing contained in this chapter shall be construed to:

(a) apply to alterations to any building which do not involve changes affecting the structural safety thereof or the public health;

(b) prevent the preparation of details and shop drawings by persons other than architects for use in connection with the execution of their work; or

(c) prevent the preparation of drawings or details for fixtures, cabinetwork, furniture, or other interior appliances or equipment or for any work necessary to provide for their installation unless the same involves public health or safety.

(3) None of the acts enumerated in subsections (1) and (2) shall be interpreted or construed as the practice of architecture.

(4) Nothing in this chapter shall be construed to affect or prevent the following, provided that no words, letters, figures, or other device shall be used in such manner as to tend to convey the impression that the person rendering such service is an architect duly registered under this chapter:

(a) consultants, officers, and employees of the United States while engaged solely in the practice of architecture for said government;

(b) professional engineers from performing architectural services which are purely incidental to their engineering practice;

(c) any person from planning, designing, altering, repairing, supervising, or engaging in residential construction consisting of less than eight living units regardless of size or cost or farm buildings which are not intended for use or used as a public building;

(d) the planning, design, alteration, construction, repair, or supervision of construction of a building by its owner if the building is not intended for use or used as a public building.

History: En. Sec. 7, Ch. 158, L. 1917; re-en. Sec. 3235, R.C.M. 1921; re-en. Sec. 3235, R.C.M. 1935; amd. Sec. 2, Ch. 149, L. 1957; amd. Sec. 3, Ch. 439, L. 1973; amd. Sec. 4, Ch. 544, L. 1977; R.C.M. 1947, 66-107(b), (c).

Cross-References

Policy regarding state practice of architecture, 18-2-111.

Part 2

Board of Architects

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1871.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-65-201. Organization — meetings — records. (1) The board must, during the first week in April of each year, elect from among its number a president, secretary, and treasurer and must have a seal.

(2) The president and secretary may administer oaths in the examination of applications for certificates and to witnesses called before the board for the transaction of business under this chapter.

(3) The board shall meet at places the board determines during the first week of April of each year and at other times.

(4) The department must keep a record of proceedings of the board.

(5) The department must keep a register of applicants for a certificate, with the name and age of applicants, the number of years spent in the study of architecture, and whether the applicant was granted a certificate or rejected. The register is prima facie evidence of the matters contained in it.

History: En. Sec. 2, Ch. 158, L. 1917; re-en. Sec. 3230, R.C.M. 1921; re-en. Sec. 3230, R.C.M. 1935; amd. Sec. 25, Ch. 350, L. 1974; R.C.M. 1947, 66-102.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Oath defined, 1-1-201.

Oaths, Title 1, ch. 6.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Public records, Title 2, ch. 6.

Preservation of records, Title 22, ch. 3, part 2.

Duty of Department to keep records, 37-1-101.

Duty of Department to provide facilities, 37-1-101.

Perjury, 45-7-201.

False swearing, 45-7-202.

Disrupting meeting as disorderly conduct, 45-8-101.

37-65-202. Compensation of board members — expenses. Each member of the board is entitled to receive compensation at the rate provided in 37-1-133 and the actual cost of mileage or other reasonable transportation costs, meals, and lodging when engaged in official board business.

History: En. Sec. 9, Ch. 158, L. 1917; re-en. Sec. 3237, R.C.M. 1921; re-en. Sec. 3237, R.C.M. 1935; amd. Sec. 141, Ch. 147, L. 1963; amd. Sec. 2, Ch. 138, L. 1967; amd. Sec. 18, Ch. 93, L. 1969; amd. Sec. 5, Ch. 439, L. 1973; amd. Sec. 28, Ch. 350, L. 1974; amd. Sec. 24, Ch. 439, L. 1975; R.C.M. 1947, 66-109(1); amd. Sec. 30, Ch. 474, L. 1981; amd. Sec. 2, Ch. 490, L. 1983.

37-65-203. Exclusive licensing jurisdiction — no additional fee. The board is vested with exclusive jurisdiction to issue licenses for the privilege of practicing architecture. No other state agency or political subdivision of the state, including counties and municipalities, may levy any fee or tax for such privilege.

History: En. Sec. 10, Ch. 158, L. 1917; re-en. Sec. 3238, R.C.M. 1921; re-en. Sec. 3238, R.C.M. 1935; amd. Sec. 3, Ch. 138, L. 1967; amd. Sec. 29, Ch. 350, L. 1974; amd. Sec. 5, Ch. 544, L. 1977; R.C.M. 1947, 66-110(2).

37-65-204. Rulemaking. The board of architects may adopt, amend, or repeal rules necessary for the implementation and enforcement of this chapter in accordance with the provisions of the Montana Administrative Procedure Act.

History: En. Sec. 9, Ch. 490, L. 1983.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-65-301. License required. Except as provided in this chapter, no person may practice architecture in this state or use the title "architect" or "licensed architect" or any words, letters, figures, or other device indicating or intending to imply that he is an architect, without having qualified under this chapter.

History: En. Sec. 3, Ch. 158, L. 1917; re-en. Sec. 3231, R.C.M. 1921; re-en. Sec. 3231, R.C.M. 1935; amd. Sec. 1, Ch. 149, L. 1957; amd. Sec. 2, Ch. 439, L. 1973; amd. Sec. 26, Ch. 350, L. 1974; amd. Sec. 2, Ch. 544, L. 1977; R.C.M. 1947, 66-103(1); amd. Sec. 3, Ch. 490, L. 1983.

37-65-302. Licensure limited to individuals. No firm, company, partnership, association, corporation, or other similar organization shall be licensed as an architect. Only individuals shall be licensed as architects, but a number of architects constituting a firm may use the collective title "architects" or "licensed architects".

History: En. Sec. 7, Ch. 158, L. 1917; re-en. Sec. 3235, R.C.M. 1921; re-en. Sec. 3235, R.C.M. 1935; amd. Sec. 2, Ch. 149, L. 1957; amd. Sec. 3, Ch. 439, L. 1973; amd. Sec. 4, Ch. 544, L. 1977; R.C.M. 1947, 66-107(a); amd. Sec. 4, Ch. 490, L. 1983.

37-65-303. Application — examination — issuance of license. (1) A person wishing to practice architecture in this state shall apply to the department for a license to do so. A person applying shall have successfully completed the requirement of prerequisites in education, practical experience, and a written examination as prescribed by the board. The examination must be in substantial conformance with the standard national council of architectural registration boards examination and grading procedure, except as modified by board rules.

(2) After examination the department shall, if the candidate has been found qualified, grant a license to the candidate to practice architecture in this state, which may only be granted on the consent of not less than two members of the board, attested by the secretary, and have the seal of the board attached.

History: En. Sec. 3, Ch. 158, L. 1917; re-en. Sec. 3231, R.C.M. 1921; re-en. Sec. 3231, R.C.M. 1935; amd. Sec. 1, Ch. 149, L. 1957; amd. Sec. 2, Ch. 439, L. 1973; amd. Sec. 26, Ch. 350, L. 1974; amd. Sec. 2, Ch. 544, L. 1977; R.C.M. 1947, 66-103(part); amd. Sec. 6, Ch. 388, L. 1979; amd. Sec. 5, Ch. 490, L. 1983.

Cross-References

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

Duty of Department to administer and grade examinations, 37-1-101.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-65-304. Examination fee — deposit of fee. (1) Applicants for examination shall pay in advance to the department a fee set by the board, commensurate with the cost, which shall defray the entire examination expense of the candidate. An applicant failing to pass the examination is entitled to reexamination at the next scheduled examination on payment of a reasonable fee prescribed by the board.

(2) The money received from the applicant shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 8, Ch. 158, L. 1917; re-en. Sec. 3236, R.C.M. 1921; re-en. Sec. 3236, R.C.M. 1935; amd. Sec. 140, Ch. 147, L. 1963; amd. Sec. 1, Ch. 138, L. 1967; amd. Sec. 4, Ch. 439, L. 1973; amd. Sec. 27, Ch. 350, L. 1974; R.C.M. 1947, 66-108; amd. Sec. 7, Ch. 388, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.

37-65-305. Licensing of and solicitation of business by architects from other states. (1) An architect holding a valid and current license to practice in another state, territory, or country may be granted a license to practice in Montana following presentation of a certificate issued by the national council of architectural registration boards and approved by the board. No arrangement may be made under this section which may lower the standard of practice of architecture in this state. The board may, if considered necessary, require an examination of applicants for a license from other states after careful consideration of the credentials from those states. The board shall by rule establish methods and procedures for investigation of applicants for a license by reciprocity.

(2) A nonresident architect who holds an unexpired license to practice architecture issued by the state in which his principal offices are located may, upon furnishing the board with such additional information or certification as it may require, offer architectural services in this state but may accept no

commission or otherwise engage in the practice of architecture within this state until licensed by the board.

History: En. Sec. 3, Ch. 158, L. 1917; re-en. Sec. 3231, R.C.M. 1921; re-en. Sec. 3231, R.C.M. 1935; amd. Sec. 1, Ch. 149, L. 1957; amd. Sec. 2, Ch. 439, L. 1973; amd. Sec. 26, Ch. 350, L. 1974; amd. Sec. 2, Ch. 544, L. 1977; R.C.M. 1947, 66-103(part); amd. Sec. 6, Ch. 490, L. 1983.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Licensing investigation and review — record access, 37-1-135.

37-65-306. Annual renewal — fee — continuing education. (1) A licensed architect in this state who desires to continue the practice of his profession shall annually during the month of July, during the time he continues in this practice:

(a) pay to the department a reasonable fee as prescribed by the board; and

(b) present evidence to the board of compliance with any continuing education requirements imposed by the board.

(2) (a) The board may by rule prescribe continuing education requirements for license renewal. If the board prescribes continuing education requirements, the rules shall provide for the method of compliance, such as:

(i) attendance at approved classroom or seminar-type instruction programs; or

(ii) passing an examination.

(b) If classroom or seminar-type instruction is required, the board shall by rule:

(i) make determinations as to approved programs; and

(ii) prescribe the number of hours required for compliance.

(c) If an examination is required, the board shall by rule prescribe:

(i) the subjects of the examination; and

(ii) the grade required to pass the examination.

History: En. Sec. 10, Ch. 158, L. 1917; re-en. Sec. 3238, R.C.M. 1921; re-en. Sec. 3238, R.C.M. 1935; amd. Sec. 3, Ch. 138, L. 1967; amd. Sec. 29, Ch. 350, L. 1974; amd. Sec. 5, Ch. 544, L. 1977; R.C.M. 1947, 66-110(1); amd. Sec. 8, Ch. 388, L. 1979; (2)En. Sec. 9, Ch. 388, L. 1979.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-65-307. Deposit of license fees. All fees and moneys received by the department for licenses from practicing architects shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 9, Ch. 158, L. 1917; re-en. Sec. 3237, R.C.M. 1921; re-en. Sec. 3237, R.C.M. 1935; amd. Sec. 141, Ch. 147, L. 1963; amd. Sec. 2, Ch. 138, L. 1967; amd. Sec. 18, Ch. 93, L. 1969; amd. Sec. 5, Ch. 439, L. 1973; amd. Sec. 28, Ch. 350, L. 1974; amd. Sec. 24, Ch. 439, L. 1975; R.C.M. 1947, 66-109(2); amd. Sec. 1, Ch. 277, L. 1983.

37-65-308. Seal of architect. Every licensed architect shall have a seal, the impression of which must contain the name of the architect, his or her place of business, and the words "Licensed Architect, State of Montana", with which he or she shall stamp all drawings and specifications issued from his or her office for use in this state.

History: En. Sec. 5, Ch. 158, L. 1917; re-en. Sec. 3233, R.C.M. 1921; re-en. Sec. 3233, R.C.M. 1935; R.C.M. 1947, 66-105.

Cross-References

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

37-65-309. Repealed. Sec. 12, Ch. 388, L. 1979.

History: En. Sec. 11, Ch. 158, L. 1917; re-en. Sec. 3239, R.C.M. 1921; re-en. Sec. 3239, R.C.M. 1935; amd. Sec. 30, Ch. 350, L. 1974; R.C.M. 1947, 66-111.

37-65-310 through 37-65-320 reserved.

37-65-321. Revocation or suspension of license — grounds — right to notice and hearing. (1) The board may revoke or suspend a license or take other appropriate disciplinary action if satisfactory proof is presented to the board that the licensee:

(a) obtained his license through fraud or misrepresentation;

(b) has been found guilty of fraud or deceit in his professional practice or has been convicted of a felony related to his professional practice of architecture;

(c) has committed acts of gross incompetency or of recklessness in the planning or construction of buildings;

(d) has violated standards of professional conduct adopted by the board;

(e) has departed, in a material respect, from approved plans or specifications without the consent of the owner or his authorized representative;

(f) except to the extent that the architect reasonably relied upon the advice of another professional in the field of building design and construction, has violated the building codes of this state or a political subdivision;

(g) has aided or abetted an unlicensed person to violate or evade this chapter; or

(h) has sealed or signed plans or specifications or other professional work not prepared under his direct supervision and control.

(2) A license may not be revoked or suspended except under the contested case provisions of the Montana Administrative Procedure Act.

(3) Charges of fraud, deceit, gross incompetence, negligence, or professional misconduct may be brought by any person against any licensee. Such charges shall be in writing, sworn to by the person making them, and filed with the secretary of the board. All charges, unless dismissed by the board as unfounded or trivial, shall be set for hearing within 3 months of filing with the secretary.

History: En. Sec. 12, Ch. 158, L. 1917; re-en. Sec. 3240, R.C.M. 1921; re-en. Sec. 3240, R.C.M. 1935; amd. Sec. 3, Ch. 149, L. 1957; amd. Sec. 4, Ch. 138, L. 1967; amd. Sec. 6, Ch. 439, L. 1973; amd. Sec. 31, Ch. 350, L. 1974; R.C.M. 1947, 66-112; amd. Sec. 7, Ch. 490, L. 1983.

Cross-References

Licensure to follow contested case procedure, 2-4-631.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of Director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunction, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Building construction standards, Title 50, ch. 60.

37-65-322. Penalty. Any person who uses the title "architect" or "licensed architect" or any other words, letters, figures, or device indicating or intending to imply that the person using the same is an architect or who shall engage in the practice of architecture within the meaning of this chapter or shall accept compensation for rendering architectural service without first having complied with the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $500 or more than $1,000 or by imprisonment in the county jail for not less than 30 days or more than 6 months or by both such fine and imprisonment. Any person convicted a second time for any violation of this chapter shall be punished by both such fine and imprisonment. The district court shall have jurisdiction of all prosecutions brought hereunder.

History: En. Sec. 6, Ch. 158, L. 1917; re-en. Sec. 3234, R.C.M. 1921; re-en. Sec. 3234, R.C.M. 1935; amd. Sec. 4, Ch. 149, L. 1957; amd. Sec. 3, Ch. 544, L. 1977; R.C.M. 1947, 66-106(1); amd. Sec. 8, Ch. 490, L. 1983.

37-65-323. Injunction. Whenever the board of architects has reasonable cause to believe that a person is violating any provision of this chapter or rule of the board, it may, in addition to the remedies provided in 37-65-322 and without prejudice thereto, bring an action in the district court for the county in which the violation is occurring to enjoin such person from continuing to engage in such violation or from doing any act in furtherance thereof.

History: En. Sec. 6, Ch. 158, L. 1917; re-en. Sec. 3234, R.C.M. 1921; re-en. Sec. 3234, R.C.M. 1935; amd. Sec. 4, Ch. 149, L. 1957; amd. Sec. 3, Ch. 544, L. 1977; R.C.M. 1947, 66-106(2).

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

Disciplinary authority of boards — injunction, 37-1-136.

CHAPTER 66

LANDSCAPE ARCHITECTURE

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37-66-105. Exemptions.

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37-66-309 through 37-66-320 reserved.
37-66-321. Revocation or suspension of license — grounds — reinstatement.
37-66-322. Penalty.
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Part 1

General

37-66-101. Short title. This chapter shall be known and cited as the "Landscape Architecture Registration and Licensing Act".

History: En. 66-3801 by Sec. 1, Ch. 476, L. 1975; R.C.M. 1947, 66-3801; amd. Sec. 4, Ch. 325, L. 1979.

37-66-102. Purpose. The purpose of this chapter is to safeguard life, health, property, and to promote the public welfare by requiring that only properly qualified persons shall be licensed to practice landscape architecture in this state.

History: En. 66-3802 by Sec. 2, Ch. 476, L. 1975; R.C.M. 1947, 66-3802.

37-66-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the board of landscape architects provided for in 2-15-1872.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Landscape architect" means a person who holds a certificate to practice landscape architecture in the state of Montana under the provisions of this chapter.

(4) "Landscape architecture" means performing services in conjunction with all aspects of the planning and design of the exterior environment for human use and environmental protection. It includes regional planning of natural resources, urban and rural planning and design, institutional design, park and recreation planning and design, and the preparation of project master plans. It is the design discipline specifically oriented to addressing the problems involved in adapting man's uses of land to the characteristics of the exterior environment both functionally and aesthetically. It includes the preparation of contract documents, construction specifications, construction cost estimates, and project contracts. It includes contract negotiations, project management, and construction management. The term does not include the design of structures or facilities with separate and self-contained purposes that are ordinarily included in the practice of engineering or architecture and does not include the making of land surveys or final land plats for official approval or recording.

History: En. 66-3803 by Sec. 3, Ch. 476, L. 1975; R.C.M. 1947, 66-3803; amd. Sec. 24, Ch. 22, L. 1979; amd. Sec. 5, Ch. 325, L. 1979; amd. Sec. 3, Ch. 274, L. 1981.

37-66-104. Acts declared unlawful. It shall be unlawful for any person to:

(1) offer to practice or hold himself out as entitled to practice landscape architecture unless duly licensed and registered under this chapter;

(2) present as his own the license of another;

(3) give false or forged evidence to the board or any member thereof in obtaining a license;

(4) falsely impersonate any other practitioner of like or different name;

(5) otherwise violate any of the provisions of this chapter.

History: En. 66-3812 by Sec. 14, Ch. 476, L. 1975; R.C.M. 1947, 66-3812(1).

37-66-105. Exemptions. (1) None of the provisions of this chapter prevent employees of those lawfully practicing as landscape architects from acting under the instruction, control, or supervision of their employers.

(2) None of the provisions of this chapter apply to any business conducted in this state by any horticulturist, nurseryman, or landscape nurseryman, plantsman, gardener, landscape gardener, landscape designer, landscape artist, landscape contractor, or land use planner, as these terms are generally used. However, no such person shall use the title "landscape architect", "landscape architecture", or any description tending to convey the impression that he is a licensed landscape architect unless he is licensed as provided in this chapter.

(3) This chapter does not apply to architects, professional engineers, and professional land surveyors licensed to practice their respective professions.

(4) None of the provisions of this chapter shall apply to any person performing any of the services mentioned in this chapter upon his own property.

(5) None of the provisions of this chapter shall require the hiring of a landscape architect.

History: En. 66-3808 by Sec. 10, Ch. 476, L. 1975; R.C.M. 1947, 66-3808; amd. Sec. 52, Ch. 83, L. 1989.

Compiler's Comments

1989 Amendment: In (3), before "land surveyors", inserted "professional".

Cross-References

Architects, Title 37, ch. 65.

Engineers and land surveyors, Title 37, ch. 67.

Part 2

Board of Landscape Architects

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1872.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-66-201. Organization — compensation. (1) At its first meeting of every calendar year, the board shall elect from among its members a chairman, who may appoint a secretary. The secretary may or may not be a member of the board.

(2) The members of the board are entitled to receive compensation and travel expenses as provided in 37-1-133.

History: En. 82A-1602.30 by Sec. 8, Ch. 476, L. 1975; amd. Sec. 24, Ch. 453, L. 1977; R.C.M. 1947, 82A-1602.30(5); amd. Sec. 6, Ch. 325, L. 1979; amd. Sec. 31, Ch. 474, L. 1981; amd. Sec. 1, Ch. 89, L. 1989.

Compiler's Comments

1989 Amendment: In first sentence of (1), before "members", deleted "public representative".

37-66-202. Rulemaking power. The board may promulgate such rules, including setting of fees, as are necessary in the performance of its duties and may hear contested cases arising under this chapter.

History: En. 82A-1602.30 by Sec. 8, Ch. 476, L. 1975; amd. Sec. 24, Ch. 453, L. 1977; R.C.M. 1947, 82A-1602.30(4).

Cross-References

Adoption and publication of rules, Title 2, ch. 4.

Contested case procedure, Title 2, ch. 6.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-66-301. License required. In order to safeguard human health and property and to promote the public welfare, any person in either public or private capacity practicing or offering to practice landscape architecture for hire shall be required to submit evidence that he is qualified to so practice and shall be registered under the provisions of this chapter.

History: En. 66-3804 by Sec. 4, Ch. 476, L. 1975; R.C.M. 1947, 66-3804.

37-66-302. Illegal use of title. No person may use the designation "landscape architect" or "landscape architecture" or advertise any title or description tending to convey the impression that he is a landscape architect or practicing landscape architecture unless such person is a landscape architect licensed with the board.

History: En. 66-3810 by Sec. 12, Ch. 476, L. 1975; R.C.M. 1947, 66-3810(part).

37-66-303. Licensing restricted to individuals — partnerships — local business licensing. (1) Certificates of licensing may be issued to natural persons only, but nothing contained in this chapter prevents a duly licensed landscape architect from performing his services for a corporation, firm, partnership, or association.

(2) Each partner in a partnership of landscape architects shall be licensed to practice landscape architecture. Subject to this requirement, a partnership of landscape architects may use a partnership name if the name consists of:

(a) the names of two or more landscape architects; or

(b) the names of one or more landscape architects and one or more professional engineers, architects, or planners.

(3) A person applying to the licensing official of any county or city for a business license to practice landscape architecture shall, at the time of application, exhibit to the licensing official satisfactory evidence under the seal of the board and the hand of its secretary that the applicant possesses a current registration with the board. The license may not be granted until such evidence is presented.

History: En. 66-3809 by Sec. 11, Ch. 476, L. 1975; amd. Sec. 33, Ch. 101, L. 1977; R.C.M. 1947, 66-3809.

37-66-304. Qualifications not required. Each applicant must be admitted to the examination without prerequisite qualifications.

History: En. 66-3805 by Sec. 5, Ch. 476, L. 1975; R.C.M. 1947, 66-3805; amd. Sec. 7, Ch. 325, L. 1979.

37-66-305. Examinations. (1) Examinations for licensure shall be given by the board at least once each year.

(2) Each applicant for licensure as a landscape architect is required to establish by examination his competency to practice the profession of landscape architecture.

(3) The examination given must be the uniform national examination prescribed by the council of landscape architectural boards.

History: En. 66-3806 by Sec. 6, Ch. 476, L. 1975; R.C.M. 1947, 66-3806; amd. Sec. 8, Ch. 325, L. 1979.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

37-66-306. Reciprocity. The board may certify for licensure without examination an applicant who is legally registered as a landscape architect in any other state or country and who is certified by the council of landscape architectural registration boards.

History: En. 66-3807 by Sec. 9, Ch. 476, L. 1975; R.C.M. 1947, 66-3807(4); amd. Sec. 9, Ch. 325, L. 1979.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-66-307. Annual renewal — withdrawal — deposit of fees. (1) Certification of licensure or renewal of registration expire on the last day of June following their issuance or renewal. Renewal may be effected during the month of June by payment to the department of the required fee. The board shall issue current renewal registration to each landscape architect promptly upon payment of the annual renewal registration fee.

(2) Any registrant in good standing, upon ceasing to practice landscape architecture, may suspend his license by giving written notice to the board. Thereafter, he may resume practice upon payment of the then-current fee and upon approval by the board.

(3) All fees received under the provisions of this chapter shall be deposited in the state special revenue fund by the department. The moneys collected shall be used by the department to carry out the purpose, duties, and responsibilities of the chapter, subject to 37-1-101(6).

History: En. 66-3807 by Sec. 9, Ch. 476, L. 1975; R.C.M. 1947, 66-3807(1) thru (3); amd. Sec. 10, Ch. 325, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-66-308. Display of license — seal of landscape architect. (1) Each holder of a license shall display it in his principal office, place of business, or place of employment.

(2) Each landscape architect shall have a seal approved by the board, which shall contain the name of the landscape architect and the words "Licensed Landscape Architect, State of Montana" and such other words or figures as the board considers necessary. All drawings and title pages of specifications prepared by such landscape architect or under the supervision of such landscape architect shall be stamped with his seal. Nothing contained herein shall be construed to permit the seal of a landscape architect to serve as a substitute for the seal of a licensed architect, a licensed professional engineer, or a licensed professional land surveyor.

History: En. 66-3810 by Sec. 12, Ch. 476, L. 1975; R.C.M. 1947, 66-3810(part); amd. Sec. 53, Ch. 83, L. 1989.

Compiler's Comments

1989 Amendment: At end of (2), before "land surveyor", inserted "professional".

Cross-References

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

37-66-309 through 37-66-320 reserved.

37-66-321. Revocation or suspension of license — grounds — reinstatement. (1) The board may revoke or suspend the license of any landscape architect upon the following grounds:

(a) fraud or deception in procuring the certification or in passing any of the examinations prescribed by this chapter;

(b) conviction of a felony by a court of competent jurisdiction. However, the right to a revoked or suspended license is regained upon termination of state supervision over the licensee.

(c) gross incompetency;

(d) fraud or deceit in the performance of official duties;

(e) willful violation of any of the provisions of this chapter or any of the rules promulgated by the board under the authority of this chapter.

(2) The board may reinstate any revoked or suspended certification upon such terms as it may impose.

History: En. 66-3811 by Sec. 13, Ch. 476, L. 1975; R.C.M. 1947, 66-3811.

Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Probation, parole, and clemency, Title 46, ch. 23.

37-66-322. Penalty. A person convicted of violating any of the provisions of this chapter shall be fined not to exceed $500. Each violation is considered a separate offense for purposes of this section.

History: En. 66-3812 by Sec. 14, Ch. 476, L. 1975; R.C.M. 1947, 66-3812(2).

37-66-323. Prosecution. All violations of this chapter, when reported to the board and duly substantiated by affidavits or other satisfactory evidence, shall be investigated by it. If the allegation is found to be true, the board shall report such violations to the county attorney of the county in which the violation occurred and request prompt prosecution.

History: En. 66-3813 by Sec. 15, Ch. 476, L. 1975; R.C.M. 1947, 66-3813.

Cross-References

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

Affidavits, Title 26, ch. 1, part 10.

CHAPTER 67

ENGINEERS AND LAND SURVEYORS

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Chapter Cross-References

Construction contracts, Title 18, ch. 2.

Procurement of architectural, engineering, and land surveying services by governmental entities, Title 18, ch. 8, part 2.

Professional service corporations, Title 35, ch. 4.

Exemption of engineers from licensure as sanitarian, 37-40-102.

Building construction standards, Title 50, ch. 60.

Corner Recordation Act of Montana — surveys and coordinates, Title 70, ch. 22.

Part 1

General

37-67-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Board" means the board of professional engineers and professional land surveyors provided for in 2-15-1873.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Engineer-in-training" means a person who complies with the requirements for education, experience, and character and has passed an examination in the fundamental engineering subjects, as provided in this chapter.

(4) "Professional land surveyor" means a person who has been duly registered and licensed as a land surveyor by the board and is a professional specialist in the technique, analysis, and application of measuring land, skilled and educated in the principles of mathematically related physical and applied sciences, and relevant requirements of law for adequate evidence and all requisites to the surveying of real property and is engaged in the practice of land surveying as herein defined.

(5) "Land surveyor-in-training" means a person who has qualified for, taken, and passed an examination on the basic disciplines of land surveying as provided in this chapter.

(6) "Practice of engineering" means any service or creative work the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning and design of engineering works and systems, planning the use of water, teaching of advanced engineering subjects, engineering surveys, and the inspection of construction for the purpose of assuring compliance with drawings and specifications; any of which embraces such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of mechanical, electrical, hydraulic, pneumatic, or thermal nature insofar as they involve safeguarding life, health, or property and including such other professional services as may be necessary to the planning, progress, and completion of any engineering services. The term does not include the work ordinarily performed by persons who operate or maintain machinery or equipment, communication lines, signal circuits, electric powerlines, or pipelines.

(7) "Practice of land surveying" means any service or work, the performance of which requires the application of special knowledge of the principles of mathematics, physical sciences, applied sciences, and:

(a) the principles of property boundary law to the recovery and preservation of evidence pertaining to earlier land surveys;

(b) teaching of land surveying subjects;

(c) measurement and allocation of lines, angles, elevations, and coordinate systems;

(d) location of natural and manmade features in the air, on the surface of the earth, within underground workings, and on the beds of bodies of water, including such work for the determination of areas and volumes;

(e) monumenting of property boundaries;

(f) platting and layout of lands and the subdivisions thereof, including the alignment and grades of streets and roads therein; and

(g) preparation and perpetuation of maps, plats, field note records, and property descriptions.

(8) "Professional engineer" means a person who, by reason of his special knowledge and use of the mathematical, physical, and engineering sciences and the principles and methods of engineering analysis and design acquired by engineering education and engineering experience, is qualified to practice engineering and who has been duly registered and licensed as a professional engineer by the board.

(9) "Responsible charge" means direct charge and control and personal supervision either of engineering work or of land surveying, as the case may be. Only professional engineers or professional land surveyors may legally assume responsible charge under this chapter.

History: En. Sec. 2, Ch. 366, L. 1975; R.C.M. 1947, 66-2350(part); amd. Sec. 25, Ch. 22, L. 1979; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 2, Ch. 553, L. 1985.

37-67-102. Representation as practitioner to be construed as practice. (1) A person shall be construed to practice or offer to practice engineering, within the meaning and intent of this chapter, who practices any branch of the profession of engineering or who by verbal claim, sign, advertisement, letterhead, card, or in any other way represents himself to be a professional engineer or through the use of some other title implies that he is a professional engineer or that he is registered under this chapter or who holds himself out as able to perform or who does perform any engineering service or work or any other service designated by the practitioner which is recognized as engineering.

(2) Any person shall be construed to practice or offer to practice land surveying, within the meaning and intent of this chapter, who engages in land surveying or who by verbal claim, sign, letterhead, card, or in any other way represents himself to be a professional land surveyor or through the use of some other title implies that he is a professional land surveyor or who represents himself as able to perform or who does perform any land surveying service or work or any other service designated by the practitioner which is recognized as land surveying.

History: En. 66-2369 by Sec. 17, Ch. 366, L. 1975; R.C.M. 1947, 66-2369; amd. Sec. 3, Ch. 553, L. 1985.

37-67-103. Exemptions. The following are exempt from coverage under this chapter:

(1) the practice of any other legally recognized professions or trades;

(2) the mere execution of work by a contractor, as distinguished from its planning or design or the supervision of the construction of work as a foreman or superintendent;

(3) the work of an employee or a subordinate of a person holding a certificate of registration under this chapter or an employee of a person practicing lawfully under this chapter, provided such work does not include final engineering or land surveying designs or decisions and is done under the direct supervision of a person holding a certificate of registration under this chapter or a person practicing lawfully under this chapter;

(4) the practice of professional engineering by licensed architects where the practice is purely incidental to their practice of architecture.

History: **En. 66-2367 by Sec. 15, Ch. 366, L. 1975; R.C.M. 1947, 66-2367; amd. Sec. 4, Ch. 553, L. 1985.**

Part 2

Board of Professional Engineers and Professional Land Surveyors

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1873.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-67-201. Organization — meetings — quorum — seal. (1) The board shall hold at least two regular meetings each year. Special meetings shall be held at such time as the rules of the board may provide. Notice of all meetings shall be given in such manner as the rules may provide.

(2) The board shall elect annually the following officers: a chairman, a vice-chairman, and a secretary.

(3) A quorum of the board shall consist of not less than five members.

(4) The board shall adopt and have an official seal.

History: **(1) thru (3)En. Sec. 8, Ch. 150, L. 1957; Sec. 66-2331, R.C.M. 1947; redes. 66-2352 by Sec. 3, Ch. 366, L. 1975; amd. Sec. 1, Ch. 317, L. 1977; Sec. 66-2352, R.C.M. 1947; (4)En. Sec. 9, Ch. 150, L. 1957; amd. Sec. 3, Ch. 282, L. 1969; Sec. 66-2332, R.C.M. 1947; redes. 66-2353 by Sec. 3, Ch. 366, L. 1975; Sec. 66-2353, R.C.M. 1947; R.C.M. 1947, 66-2352, 66-2353(part); amd. Sec. 4, Ch. 408, L. 1979.**

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Duty of Department to provide facilities, 37-1-101.

Disrupting meeting as disorderly conduct, 45-8-101.

37-67-202. Rulemaking and subpoena power. (1) The board shall have the power to adopt and amend all rules, including rules of procedure, not inconsistent with the constitution and laws of this state, which may be reasonably necessary for the proper performance of its duties and the regulation of the proceedings before it.

(2) In carrying into effect the provisions of this chapter, the board, under the hand of its chairman and the seal of the board, may subpoena witnesses and compel their attendance and also may require the production of books, papers, documents, etc., in a case involving the revocation of registration or practicing or offering to practice without registration. Any member of the board may administer oaths or affirmations to witnesses appearing before the board. If any person shall refuse to obey any subpoena so issued or shall refuse to testify or produce any books, papers, or documents, the board may

present its petition to the district court setting forth the facts, and thereupon such court shall, in a proper case, issue its subpoena to such person requiring his attendance before such authority and there to testify or to produce such books, papers, and documents as may be deemed necessary and pertinent by the board. Any person failing or refusing to obey the subpoena or order of the court may be proceeded against in the same manner as for refusal to obey any other subpoena or order of said court.

History: En. Sec. 9, Ch. 150, L. 1957; amd. Sec. 3, Ch. 282, L. 1969; Sec. 66-2332, R.C.M. 1947; redes. 66-2353 by Sec. 3, Ch. 366, L. 1975; R.C.M. 1947, 66-2353(part).

Cross-References

Oath defined, 1-1-201.
Seal defined, 1-4-201.
Manner of making seal, 1-4-202.
Oaths, Title 1, ch. 6.
Power of agencies to issue subpoenas, 2-4-104.
Adoption and publication of rules, Title 2, ch. 4, part 3.
Power of hearing officer to issue subpoenas, 2-4-611.
Allocation for administrative purposes only, 2-15-121.
Quasi-judicial boards, 2-15-124.
Subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2, part 1.
Arrest of witness for disobedience of subpoena, 26-2-106, 26-2-107.
Duties of boards, 37-1-131.
Perjury, 45-7-201.
False swearing, 45-7-202.

37-67-203. Compensation of board members — expenses. Each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 6, Ch. 150, L. 1957; Sec. 66-2329, R.C.M. 1947; amd. Sec. 40, Ch. 439, L. 1975; redes. 66-2351 by Sec. 3, Ch. 366, L. 1975; R.C.M. 1947, 66-2351; amd. Sec. 32, Ch. 474, L. 1981.

37-67-204. Record of proceedings — register of applicants. (1) The department shall keep a record of its proceedings and a register of the board's proceedings.

(2) The department shall keep a register of applicants for registration, which shall show:

(a) the name, age, and residence of each applicant;
(b) the date of the application;
(c) the place of business of the applicant;
(d) his educational and other qualifications;
(e) the branch or branches of engineering in which the applicant qualified;
(f) whether an examination was required;
(g) whether the applicant was rejected;
(h) whether a certificate of registration was granted;
(i) the date of the action of the board; and
(j) other information considered necessary by the board.

(3) The records of the department are prima facie evidence of the proceedings of the board, and a transcript thereof, certified by the department, is admissible in evidence as if the original were produced.

History: En. Sec. 11, Ch. 150, L. 1957; Sec. 66-2334, R.C.M. 1947; amd. Sec. 27, Ch. 93, L. 1969; amd. Sec. 217, Ch. 350, L. 1974; redes. 66-2355 by Sec. 3, Ch. 366, L. 1975; R.C.M. 1947, 66-2355.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.
Public records, Title 2, ch. 6.
Preservation of records, Title 22, ch. 3, part 2.
Contents of writings, recordings, and photographs, Article X, Montana Rules of Evidence (see Title 26, ch. 10).
Duty of Department to keep records, 37-1-101.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-67-301. License required to practice or offer to practice. In order to safeguard life, health, and property and to promote the public welfare, any person in either public or private capacity practicing or offering to practice engineering or land surveying shall hereafter be required to submit evidence that he is qualified so to practice and shall be registered as hereinafter provided. From and after January 1, 1958, it shall be unlawful for any person to practice or to offer to practice in this state engineering or land surveying, as defined in this chapter, or to use in connection with his name or otherwise assume, use, or advertise any title or description tending to convey the impression that he is a professional engineer or a professional land surveyor unless such person has been duly registered under the provisions of this chapter.

History: En. Sec. 1, Ch. 150, L. 1957; Sec. 66-2324, R.C.M. 1947; redes. 66-2349 by Sec. 3, Ch. 366, L. 1975; R.C.M. 1947, 66-2349; amd. Sec. 6, Ch. 553, L. 1985.

Cross-References

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-67-302. Practice without a license a public nuisance. The practice of engineering or land surveying, as defined herein, without a license is hereby declared to be a public nuisance.

History: En. Sec. 9, Ch. 150, L. 1957; amd. Sec. 3, Ch. 282, L. 1969; Sec. 66-2332, R.C.M. 1947; redes. 66-2353 by Sec. 3, Ch. 366, L. 1975; R.C.M. 1947, 66-2353(part).

Cross-References

Nuisances, Title 27, ch. 30.

37-67-303. Application — contents — fees. (1) Applications for registration shall be on forms prescribed by the board and furnished by the department, shall contain statements made under oath showing the applicant's education and a detailed summary of his technical work, and shall contain the required references.

(2) The fee for engineer-in-training is as prescribed by the board and shall accompany the application and shall include the cost of one examination. No additional fee is required for issuance of a certificate.

(3) The application fee for registration as a professional engineer is as prescribed by the board for those holding an engineer-in-training certificate validated for Montana. For those holding a valid engineer-in-training certificate from some other state, the application fee is as prescribed by the board, which includes cost of verification of engineer-in-training certification and one examination. Upon approval of application for registration as a professional engineer, an additional fee equal to the existing renewal fee must be paid before issuance of a certificate as a professional engineer.

(4) The department, subject to approval by the board, may, on approval of the application, payment of a fee as prescribed by the board and payment of an additional fee equal to the appropriate renewal fee, issue a certificate of registration as a professional engineer to a person who holds a certificate of qualification or registration issued to him by the committee on national engineering certification of the national council of engineering examiners or by a state, territory, or possession of the United States or by another country if the applicant's qualifications meet the requirements of this chapter and the rules of the board.

(5) The fee for land surveyor-in-training is as prescribed by the board, which shall accompany the application and shall include the cost of one examination. No additional fee is required for issuance of a certificate.

(6) The application fee for registration as a professional land surveyor is as prescribed by the board for those holding a land surveyor-in-training certificate validated in Montana. For those holding a valid land surveyor-in-training certificate from some other state, the application fee is as prescribed by the board, which includes cost of verification of the certification. Upon approval of application for registration as a professional land surveyor, an additional fee equal to the existing renewal fee must be paid before issuance of a certificate as a professional land surveyor.

(7) The application fee for registration as both a professional engineer and professional land surveyor is as prescribed by the board for those holding engineer-in-training and land surveyor-in-training certificates validated in Montana. For those holding valid engineer-in-training and land surveyor-in-training certificates from another state, the application fee is as prescribed by the board. The fee shall accompany the application. Upon approval of application for registration as a professional engineer and professional land surveyor, an additional fee equal to the existing renewal fee must be paid before issuance of a certificate.

(8) If the board denies issuance of a certificate of registration to any applicant, the initial fee deposited shall be retained as an application fee.

History: En. Sec. 14, Ch. 150, L. 1957; Sec. 66-2337, R.C.M. 1947; amd. Sec. 5, Ch. 282, L. 1969; amd. Sec. 2, Ch. 364, L. 1971; amd. Sec. 219, Ch. 350, L. 1974; amd. Sec. 7, Ch. 215, L. 1975; redes. 66-2358 by Sec. 6, Ch. 366, L. 1975; amd. Sec. 21, Ch. 101, L. 1977; amd. Sec. 3, Ch. 317, L. 1977; R.C.M. 1947, 66-2358(1) thru (8); amd. Sec. 5, Ch. 408, L. 1979; amd. Sec. 66, Ch. 345, L. 1981; amd. Sec. 1, Ch. 489, L. 1981; amd. Sec. 7, Ch. 553, L. 1985; amd. Sec. 1, Ch. 72, L. 1987.

Cross-References

Oath defined, 1-1-201.

Proof of execution, Title 1, ch. 5, part 3.

Power of notary to take acknowledgments, 1-5-416.

Oaths, Title 1, ch. 6.

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

Reporting disciplinary actions against licensees, 37-1-105.

Licensing boards to establish fees commensurate with costs, 37-1-134.

Perjury, 45-7-201.

False swearing, 45-7-202.

37-67-304. Municipality may not impose fee. No registration or license fee or tax may be imposed by a municipality or by any other political subdivision of the state on a person registered under this chapter.

History: En. Sec. 14, Ch. 150, L. 1957; Sec. 66-2337, R.C.M. 1947; amd. Sec. 5, Ch. 282, L. 1969; amd. Sec. 2, Ch. 364, L. 1971; amd. Sec. 219, Ch. 350, L. 1974; amd. Sec. 7, Ch. 215, L. 1975; redes. 66-2358 by Sec. 6, Ch. 366, L. 1975; amd. Sec. 21, Ch. 101, L. 1977; amd. Sec. 3, Ch. 317, L. 1977; R.C.M. 1947, 66-2358(9).

37-67-305. General qualifications of applicants for registration as professional engineer or engineer-in-training. To be eligible for admission to examination for professional engineer or engineer-in-training, an applicant must be of good character and reputation. The applicant must submit five references with his application for registration as a professional engineer; three references shall be professional engineers with personal knowledge of his engineering experience. In the case of an application for certification as an engineer-in-training, the applicant must submit three character references.

History: **En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(part).**

37-67-306. Qualifications of applicant for registration as professional engineer. The following is considered minimum evidence satisfactory to the board that the applicant is qualified for registration as a professional engineer:

(1) A graduate of an engineering or engineering technology curriculum of 4 years or more approved by the board as being of satisfactory standing, with a specific record of an additional 4 years or more of progressive experience on engineering projects of a grade and character which indicate to the board that the applicant may be competent to practice engineering, shall be admitted to an 8-hour written examination in the fundamentals of engineering and an 8-hour written examination in the principles and practices of engineering. Upon passing such examinations, the applicant shall be granted a certificate of registration to practice engineering in this state provided he is otherwise qualified.

(2) A graduate of a related science curriculum of 4 years or more, other than engineering or engineering technology, with a specific record of 8 years or more of progressive experience on engineering projects of a grade and character which indicate to the board that the applicant may be competent to practice engineering, may be admitted to an 8-hour written examination in the fundamentals of engineering and an 8-hour written examination in the principles and practices of engineering. Upon passing such examinations, the applicant shall be granted a certificate of registration to practice engineering in this state provided he is otherwise qualified.

(3) A graduate of an engineering or related science curriculum of 4 years or more with a specific record of 20 years or more of progressive experience on engineering projects, of which at least 10 years have been in charge of important engineering projects, of a grade and character which indicate to the board that the applicant may be competent to practice engineering shall be admitted to an 8-hour written examination in the principles and practices of engineering. Upon passing such examination, the applicant shall be granted a certificate of registration to practice engineering in this state provided he is otherwise qualified.

(4) Engineering teaching in a college or university offering an approved engineering curriculum of 4 years or more may be considered as engineering experience in these requirements provided research, product development, or consulting has been a concurrent activity.

History: **En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(part); amd. Sec. 2, Ch. 59, L. 1985.**

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-67-307. Qualifications of applicant for registration as engineer-in-training. The following shall be considered as minimum evidence that the applicant is qualified for certification as an engineer-in-training:

(1) A graduate of an engineering or engineering technology curriculum of 4 years or more, approved by the board as being of satisfactory standing, shall be admitted to an 8-hour written examination in the fundamentals of engineering. Upon passing such examination, the applicant shall be certified or enrolled as an engineer-in-training if he is otherwise qualified.

(2) A graduate of a related science curriculum of 4 years or more, other than engineering or engineering technology, with a specific record of 4 or more years of progressive experience on engineering projects of a grade and character satisfactory to the board shall be admitted to an 8-hour written examination in the fundamentals of engineering. Upon passing such examination, the applicant shall be certified or enrolled as an engineer-in-training if he is otherwise qualified.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(1)(b); amd. Sec. 1, Ch. 59, L. 1985.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-67-308. General qualifications of applicants for registration as professional land surveyor or land surveyor-in-training. (1) To be eligible for admission to examination for professional land surveyor or land surveyor-in-training, an applicant must be of good character and reputation. The applicant shall submit five references with his application for registration as a professional land surveyor, three of which references shall be professional land surveyors having personal knowledge of his land surveying experience. In the case of an application for certification as a land surveyor-in-training, the applicant shall submit three references, one of whom shall be a professional land surveyor having personal knowledge of the applicant's land surveying experience.

(2) The evaluation of a land surveyor applicant's qualifications involves a consideration of his education, technical and land surveying experience, exhibits of land surveying projects which he has been in charge of, recommendations by references, and a reviewing of these categories. The board may require an interview if it considers one necessary.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(part); amd. Sec. 2, Ch. 489, L. 1981; amd. Sec. 1, Ch. 354, L. 1983; amd. Sec. 8, Ch. 553, L. 1985; amd. Sec. 2, Ch. 72, L. 1987.

Cross-References

Licensing investigation and review — record access, 37-1-135.

37-67-309. Qualifications of applicant for registration as professional land surveyor. One of the following shall be considered as minimum evidence to the board that the applicant is qualified for registration as a professional land surveyor:

(1) have a bachelor of science degree in a board-approved curriculum that must contain a minimum of 40 quarter credit hours in surveying techniques, principles, and practices, and present evidence satisfactory to the board that, in addition thereto, he has had at least 4 years of combined office and field experience in land surveying, with a minimum of 3 years of progressive experience on land surveying projects under the direct supervision of a professional land surveyor, and have passed the examinations as required by the board;

(2) have 2 years of formal education in a board-approved curriculum above high school level with at least 90 quarter credit hours that must contain a minimum of 40 quarter credit hours in surveying techniques, principles, and practices, or equivalent semester hours passed, or the equivalent approved by the board, and present evidence satisfactory to the board that, in addition thereto, he has had at least 6 years of combined office and field experience in land surveying satisfactory to the board, with a minimum of 4 years of progressive experience on land surveying projects under the direct supervision of a professional land surveyor, and have passed the examinations as required by the board;

(3) have a bachelor of science degree in a board-approved curriculum and present evidence satisfactory to the board that, in addition thereto, he has had at least 6 years of combined office and field experience in land surveying, with a minimum of 4 years of progressive experience on land surveying projects under the direct supervision of a professional land surveyor, and have passed the examinations as required by the board; or

(4) present evidence satisfactory to the board that he has had at least 10 years of combined office and field experience in land surveying satisfactory to the board, with a minimum of 6 years of progressive experience on land surveying projects under the direct supervision of a professional land surveyor, and has passed the examinations as required by the board.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(part); amd. Sec. 2, Ch. 354, L. 1983; amd. Sec. 9, Ch. 553, L. 1985; amd. Sec. 3, Ch. 72, L. 1987.

Cross-References

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-67-310. Qualifications of applicant for registration as land surveyor-in-training. One of the following shall be considered as minimum evidence to the board that the applicant is qualified for registration as a land surveyor-in-training:

(1) have a bachelor of science degree in a board-approved curriculum that must contain a minimum of 40 quarter credit hours in surveying techniques, principles, and practices, and have passed the written examinations required by the board;

(2) have at least 2 years of formal education in an approved curriculum that must contain a minimum of 40 quarter credit hours in surveying techniques, principles, and practices, above high school level with at least 90 quarter credit hours or equivalent semester hours passed, or the equivalent approved by the board, and have passed the written examinations required by the board;

(3) have a bachelor of science degree in a board-approved curriculum and present evidence satisfactory to the board that, in addition thereto, he has had at least 2 years of combined office and field experience in land surveying, with a minimum of 1 year in charge of land surveying projects under the supervision of a professional land surveyor, and have passed the written examinations required by the board; or

(4) present evidence satisfactory to the board that he has had at least 6 years of combined office and field experience in land surveying, with a minimum of 4 years of experience in charge of land surveying projects in Montana, under the supervision of a professional land surveyor, and has passed the examinations required by the board.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(2)(b); amd. Sec. 3, Ch. 354, L. 1983; amd. Sec. 10, Ch. 553, L. 1985; amd. Sec. 4, Ch. 72, L. 1987.

Cross-References

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-67-311. Examinations. Examination requirements are as follows:

(1) The examinations shall be held at times and places as the board directs. The board shall determine the acceptable grade on examinations.

(2) Written examinations may be taken only after the applicant has met the other minimum requirements as given in 37-67-305 through 37-67-310 and has been approved by the board for admission to the examinations as follows:

(a) The examination on engineering fundamentals consists of an 8-hour examination on the fundamentals of engineering. Passing the examination qualifies the examinee for an engineer-in-training certificate provided he has met all other requirements for certification required by this chapter.

(b) The examination on principles and practice of engineering consists of an 8-hour examination on applied engineering. Passing this examination qualifies the examinee for registration as a professional engineer provided he has met the other requirements for registration required by this chapter.

(c) The examinations for land surveyor-in-training consist of two 4-hour examinations, designated as parts I and II, on the basic disciplines of land surveying. Passing these examinations qualifies the examinee for a land surveyor-in-training certificate provided he has met all other requirements for certificates required by this chapter.

(d) The requirements and examinations for professional land surveyor consist of being a land surveyor-in-training and of two 4-hour examinations, designated as parts III and IV, on the applied disciplines of land surveying. Passing these examinations qualifies the examinee for registration as a professional land surveyor provided he has met the other requirements for registration required by this chapter.

(3) A candidate failing one examination may apply for reexamination, which may be granted upon payment of a fee established by the board. Before readmission to the examination in the event of a second failure, the examinee must appear before the board with evidence of having acquired the necessary additional knowledge to qualify.

History: En. 66-2359 by Sec. 7, Ch. 366, L. 1975; R.C.M. 1947, 66-2359; amd. Sec. 11, Ch. 553, L. 1985.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

37-67-312. Licensure of professional engineers without examination by comity or endorsement. (1) A person holding a certificate of registration to engage in the practice of engineering issued to him by a proper authority of a state, territory, or possession of the United States, the District of Columbia, or any foreign country, based on requirements that do not conflict with the provision of this chapter and were of a standard not lower than that specified in the applicable registration act in effect in this state at the time the certificate was issued, may upon application be registered without further examination.

(2) A person holding a certificate of qualification issued by the committee on national engineering certification of the national council of engineering examiners, whose qualifications meet the requirements of this chapter, may upon application be registered without further examination.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(1)(a)(i).

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-67-313. Comity consideration for land surveyors from other states. A person holding a certificate of registration to engage in the practice of land surveying issued by a proper authority of a state, territory, or possession of the United States or the District of Columbia, based on requirements that do not conflict with the provisions of this chapter and were of a standard not lower than that specified in the applicable registration act in effect in this state at the time the certificate was issued, will be given comity consideration. However, he may be asked to meet the conditions for taking and take such examinations as the board deems necessary to determine his qualifications; but in any event, he shall be required to pass a written examination of not less than 8-hours' duration, which shall include questions on laws, procedures, and practices pertaining to the practice of land surveying in this state.

History: En. 66-2357 by Sec. 5, Ch. 366, L. 1975; R.C.M. 1947, 66-2357(2)(a)(iii); amd. Sec. 12, Ch. 553, L. 1985.

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-67-314. Issuance of certificates — seal of professional engineer or professional land surveyor — enrollment card for trainees. (1) The department shall issue to any applicant who, in the opinion of the board, has met the requirements of this chapter a certificate of registration giving the registrant proper authority to practice his profession and to assume responsible charge of engineering or land surveying projects in this state. The certificate of registration for a professional engineer shall carry the designation "professional engineer" and for a professional land surveyor, "professional land surveyor". It shall give the full name of the registrant with his serial number and shall be signed by the chairman and the secretary under the seal of the board.

(2) This certificate shall be prima facie evidence that the person named thereon is entitled to all rights, privileges, and responsibilities of a professional engineer or professional land surveyor while the certificate of registration remains unrevoked or unexpired.

(3) Each registrant hereunder may, upon registration, obtain a seal of a design authorized by the board, bearing the registrant's name, serial number, and the legend "professional engineer" and/or "professional land surveyor". Plans, specifications, plats, drawings, reports, design information, and calculations prepared by a registrant must when issued be signed with a written signature, dated, and stamped with the seal or a seal facsimile. It is unlawful for a registrant to affix or permit his seal and signature or seal facsimile to be affixed to any plans, specifications, plats, drawings, reports, design information, or calculations after the expiration of a certificate or for projects for which the registrant was not in responsible charge.

(4) The department shall issue to any applicant who, in the opinion of the board, has met the requirements of this chapter an enrollment card as engineer-in-training or land surveyor-in-training which indicates that his name has been recorded as such in the board office. The engineer-in-training or land surveyor-in-training enrollment card does not authorize the holder to practice as a professional engineer or professional land surveyor.

History: **En. 66-2360 by Sec. 8, Ch. 366, L. 1975; R.C.M. 1947, 66-2360; amd. Sec. 13, Ch. 553, L. 1985.**

Cross-References

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

37-67-315. Biennial renewal — fee — statement of competency. (1) Certificates of registration expire every second year on the date established by rule of the department and become invalid on that date unless renewed. The department shall notify every person registered under this chapter of the date of the expiration of his certificate and the amount of the fee required for its renewal for 2 years. This notice shall be mailed at least 1 month in advance of the date of the expiration of the certificate. Renewal may be made prior to the expiration date by the payment of a fee as set by the board for either a professional engineer or professional land surveyor. For renewal of a dual license as both a professional engineer and professional land surveyor, the fee shall be set by the board.

(2) No certificate may be renewed unless the registrant submits a statement to the effect and the board is satisfied that he has maintained competency by:

(a) the continued practice of engineering or land surveying; or

(b) engaging in other activities that provide for the maintenance of competency as prescribed by board rule.

(3) Failure on the part of a registrant to renew his certificate biennially prior to the expiration date does not deprive him of the right of renewal; however, a registrant who fails to pay the renewal fee for an additional year of the biennium shall be considered a new applicant and is required to submit a new application.

(4) The fee for any registrant who fails to renew his certificate prior to the expiration date shall be increased by an amount not to exceed 50% of his renewal fee. Renewal may not be completed until all fees are paid.

History: **En. Sec. 17, Ch. 150, L. 1957; Sec. 66-2340, R.C.M. 1947; amd. Sec. 7, Ch. 282, L. 1969; amd. Sec. 222, Ch. 350, L. 1974; amd. Sec. 8, Ch. 215, L. 1975; redes. 66-2361 by Sec. 9, Ch. 366, L. 1975; R.C.M. 1947, 66-2361; amd. Sec. 6, Ch. 408, L. 1979; amd. Sec. 67, Ch. 345, L. 1981; amd. Sec. 3, Ch. 489, L. 1981; amd. Sec. 8, Ch. 390, L. 1983; amd. Sec. 14, Ch. 553, L. 1985.**

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-67-316. Replacement of lost or destroyed certificate. A new certificate of registration to replace a certificate revoked, lost, destroyed, or mutilated may be issued by the department, subject to the rules of the board.

History: **En. 66-2365 by Sec. 13, Ch. 366, L. 1975; R.C.M. 1947, 66-2365(part).**

37-67-317. Deposit of moneys collected. The department shall collect all moneys under this chapter and shall deposit these moneys in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: **En. Sec. 10, Ch. 150, L. 1957; Sec. 66-2333, R.C.M. 1947; amd. Sec. 123, Ch. 147, L. 1963; amd. Sec. 28, Ch. 177, L. 1965; amd. Sec. 216, Ch. 350, L. 1974; redes. 66-2354 by Sec. 3, Ch. 366, L. 1975; R.C.M. 1947, 66-2354; amd. Sec. 1, Ch. 277, L. 1983.**

37-67-318. Roster of licensees to be published by department. A roster showing the names and addresses of registered professional engineers and registered professional land surveyors shall be published by the department. Copies shall be placed on file with the secretary of state, the clerk of each incorporated city and town, and in the office of each county clerk and recorder within the state and furnished to each person registered and to the public, on request, at a fee established by the board.

History: **En. Sec. 12, Ch. 150, L. 1957; Sec. 66-2335, R.C.M. 1947; amd. Sec. 218, Ch. 350, L. 1974; amd. and redes. 66-2356 by Sec. 4, Ch. 366, L. 1975; amd. Sec. 2, Ch. 317, L. 1977; R.C.M. 1947, 66-2356; amd. Sec. 7, Ch. 408, L. 1979; amd. Sec. 15, Ch. 553, L. 1985.**

Cross-References

Public records generally, Title 2, ch. 6, part 1.

Prohibition on distribution or sale of mailing lists, 2-6-109.

37-67-319. Temporary permits for nonresident practitioners. Temporary permits are governed by the following:

(1) Such a permit may be granted for the practice or offer to practice engineering by a person not a resident of or having no established place of business in this state, provided such person is legally qualified by registration to practice engineering in his own state or country, provided the requirements for registration in his home state or country are not less than those defined in this chapter. Such person shall make application to the board in writing. The application must be accompanied by a fee set by the board. Upon approval by the board, such person may be granted a written permit for a definite period of time not to exceed 1 year to do a specific job; provided, however, no right to practice engineering shall accrue to such applicant with respect to any other works not set forth in the permit.

(2) The practice of land surveying under a temporary permit by a person registered as a professional land surveyor in another state is not considered to be in the best interests of the public and, therefore, may not be granted.

History: **En. 66-2368 by Sec. 16, Ch. 366, L. 1975; R.C.M. 1947, 66-2368; amd. Sec. 26, Ch. 22, L. 1979; amd. Sec. 16, Ch. 553, L. 1985.**

Cross-References

Rules for determining residency, 1-1-215.

37-67-320. Practice by partnerships and corporations. (1) The practice of or offer to practice engineering or land surveying by registered professional engineers or registered professional land surveyors organized as a partnership or incorporated as a professional corporation under the provisions of the professional corporations law of this state or under the provisions of a similar law of any other state is permitted in this state if all the partners of the partnership or each officer and shareholder of the professional corporation are registered under or exempt from this chapter.

(2) The practice of or offer to practice engineering or land surveying by a partnership other than one provided for in subsection (1) or by a corporation, other than a professional corporation, is permitted in this state if:

(a) all officers, employees, and agents of a partnership or corporation who will perform the practice of engineering or land surveying within this state for the partnership or corporation are registered under this chapter;

(b) each person in responsible charge of the activities of a partnership or corporation, which activities constitute the practice of engineering or land surveying, is a professional engineer or professional land surveyor registered in this state or a person authorized to practice engineering or land surveying as provided in this chapter;

(c) the partnership or corporation has been issued a certificate of authorization by the board as provided in subsection (3);

(d) the partnership or corporation is jointly and severally responsible with and for the conduct or acts of its agents, employees, or officers concerning any professional engineering or land surveying services performed or to be executed in this state; an individual practicing engineering or land surveying is not relieved of the responsibility for his conduct or acts performed by reason of his employment by or relationship with the partnership or corporation; and

(e) all final drawings, specifications, plans, reports, or other engineering or land surveying papers or documents involving the practice of engineering or land surveying, when issued, are dated and bear the seals and signatures of the professional engineers or professional land surveyors registered under this chapter by whom or under whose responsible charge they were prepared.

(3) A partnership or corporation desiring a certificate of authorization or the renewal thereof shall file a written application with the board listing the names and addresses of all partners of the partnership or officers and directors of the corporation and the names and addresses of all employees who are registered to practice engineering or land surveying in this state and who are or will be in responsible charge of any engineering or land surveying in this state by the partnership or corporation, together with any other information the board requires. Upon the receipt of an application and of a fee in an amount established by the board for the initial certificate or biennial renewal thereof, the board shall issue to the partnership or corporation a certificate of authorization or a renewal thereof, which certificate of authorization may not be transferred. If the board finds an error in an application or that facts exist which would entitle the board to suspend or revoke a certificate if issued to the applicant, the board shall deny the application. If a change occurs in the information submitted on the application of a partnership or corporation within the term of the authorization, the partnership or corporation shall file with the board a written report listing the change within 30 days after the change occurs. The provisions of this chapter concerning issuance, expiration, renewal, and reissuance of certificates of registration of individuals, except for

37-67-315(2), apply to certificates of authorization issued to partnerships and corporations under this subsection. Partnerships or corporations are subject to disciplinary proceedings and penalties and the board may reprimand them or revoke, suspend, or refuse to renew their certificates of authorization for cause in the same manner and to the same extent as provided in 37-67-331. "Registrant" and "certificate of registration" in 37-67-331 include any partnership or corporation holding a certificate of authorization issued under this subsection and to such certificate of authorization.

History: **En. Sec. 5, Ch. 553, L. 1985.**

37-67-321. Emeritus status. (1) A registrant who has terminated his practice of engineering or land surveying may apply to the board for emeritus status.

(2) Upon receiving an application for emeritus status accompanied by the fee established by the board, the board shall issue a certificate of emeritus status to the applicant and record the applicant's name in the roster as an emeritus registrant, along with the date he received emeritus status.

(3) An emeritus registrant may retain but may not use his seal and may not practice engineering or land surveying.

(4) The board shall reissue a certificate of registration to an emeritus registrant who pays all application fees, meets all current requirements for registration, and demonstrates to the board's satisfaction that for the 2 years preceding his application for registration he has met the requirements for maintaining professional competence established under 37-67-315.

History: **En. Sec. 19, Ch. 553, L. 1985.**

37-67-322 through 37-67-330 reserved.

37-67-331. Revocation, suspension, or refusal to renew certificate — grounds — procedure — reinstatement. (1) The board may reprimand or revoke, suspend, or refuse to renew the certificate of a registrant found guilty of:

(a) fraud or deceit in obtaining a certificate of registration;

(b) gross negligence, incompetency, or misconduct in the practice of engineering or land surveying as a registered professional engineer or professional land surveyor;

(c) a felony;

(d) violation of rules for professional conduct for professional engineers and professional land surveyors adopted by the board;

(e) if a professional land surveyor, failure to comply with the Corner Recordation Act.

(2) Any person may make charges of fraud, deceit, gross negligence, incompetency, or misconduct against a registrant. The charges shall be made by affidavit and subscribed and sworn to by the person making them and filed with the department. The charges shall be investigated by the board and, unless the board dismisses the charges after investigation as unfounded or trivial, it shall act on the charges within 6 months after the date on which the charges were made. The board is considered to have acted on the charges if it has given notice by mail to the licensee of its intent to revoke, suspend,

or refuse to renew his license and the notice contains the facts or conduct which warrant the intended action. For purposes of investigation under this section, the board may require that a registrant meet with it.

(3) The board may require a registrant to take a written or oral examination, or both, in a proceeding to reprimand or revoke, suspend, or refuse to renew.

(4) If, after hearing, five or more members of the board vote in favor of sustaining the charges, the board shall reprimand, suspend, refuse to renew, or revoke the certificate of registration of the registered professional engineer or professional land surveyor.

(5) The board, for reasons it considers sufficient, may reissue a certificate of registration to a person whose certificate has been revoked if five or more members of the board vote in favor of the reissuance.

History: En. 66-2365 by Sec. 13, Ch. 366, L. 1975; R.C.M. 1947, 66-2365(part); amd. Sec. 8, Ch. 408, L. 1979; amd. Sec. 17, Ch. 553, L. 1985.

Cross-References

Oath defined, 1-1-201.

Power of notary to take acknowledgments, 1-5-416.

Oaths, Title 1, ch. 6.

Licensing to follow contested case procedure, 2-4-631.

Affidavits, Title 26, ch. 1, part 10.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting disciplinary actions against licensees, 37-1-105.

Duties of Director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Perjury, 45-7-201.

False swearing, 45-7-202.

Corner Recordation Act of Montana, Title 70, ch. 22, part 1.

37-67-332. Violations — penalties — enforcement. (1) A person who practices or offers to practice engineering or land surveying in this state without being registered under this chapter or a person presenting or attempting to use as his own the certificate of registration or the seal of another or a person who gives false or forged evidence to the board or department in obtaining a certificate of registration or a person who falsely impersonates another registrant or a person who attempts to use an expired, revoked, or emeritus certificate of registration or a person who violates this chapter is guilty of a misdemeanor and shall on conviction be fined not less than $100 or more than $500 or imprisoned for a period not exceeding 3 months, or both.

(2) All officers of the law of this state or a political subdivision thereof shall enforce this chapter and prosecute persons violating it. The attorney general shall act as legal adviser of the board and render legal assistance necessary in carrying out this chapter.

History: En. Sec. 23, Ch. 150, L. 1957; Sec. 66-2346, R.C.M. 1947; amd. Sec. 225, Ch. 350, L. 1974; redes. 66-2366 by Sec. 14, Ch. 366, L. 1975; R.C.M. 1947, 66-2366; amd. Sec. 18, Ch. 553, L. 1985.

Cross-References

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

Forgery, 45-6-325.

CHAPTER 68

ELECTRICIANS AND ELECTRICAL SAFETY

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37-68-309. Electricians licensed by other states — reciprocity.
37-68-310. Annual renewal.
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37-68-312. Electrical contractor's license — application — issuance — fees — renewal.
37-68-313. Reasonable fees — deposit of money collected.
37-68-314. Qualifications for licensing examination — when no discretion in board.
37-68-315 through 37-68-320 reserved.
37-68-321. Suspension or revocation of license.
37-68-322. Penalty.

Chapter Cross-References

Construction contracts, Title 18, ch. 2.

Building construction standards, Title 50, ch. 60.

Part 1

General

37-68-101. Purpose. The purpose of this chapter is to:

(1) protect the health and safety of the people of this state from the danger of electrically caused shocks, fires, and explosions;

(2) protect property from the hazard of electrically caused fires and explosions;

(3) establish a procedure for determining where and by whom electrical installations are to be made;

(4) assure the public that persons making electrical installations are qualified; and

(5) insure that the electrical installations and electrical products made and sold in this state meet minimum safety standards.

History: En. Sec. 2, Ch. 148, L. 1965; amd. Sec. 19, Ch. 366, L. 1969; amd. Sec. 1, Ch. 425, L. 1973; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 269, Ch. 350, L. 1974; amd. Sec. 8, Ch. 504, L. 1977; R.C.M. 1947, 66-2802(part).

37-68-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the state electrical board provided for in 2-15-1874.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Electrical contractor" means a person, firm, partnership, corporation, association, or combination of these who undertakes or offers to undertake for another the planning, laying out, supervising, and installing or the making of additions, alterations, and repairs in the installation of wiring apparatus and equipment for electric light, heat, and power. A registered electrical engineer who plans or designs electrical installations is not an electrical contractor.

(4) "Journeyman electrician" means a person having the necessary qualifications, training, experience, and technical knowledge to wire for, install, and repair electrical apparatus and equipment for light, heat, power, and other purposes under the rules governing this work.

(5) "Master electrician" means a person having the necessary qualifications, training, experience, and technical knowledge to properly plan, lay out, and supervise the installation and repair of wiring apparatus and equipment for electric light, heat, power, and other purposes under the rules governing this work.

(6) "Residential electrician" means a person having the necessary qualifications, training, experience, and technical knowledge to wire for, install, and repair electrical apparatus and equipment for light, heat, power, and other purposes in residential construction consisting of less than five living units in a single structure under the rules governing this work.

History: En. Sec. 3, Ch. 148, L. 1965; amd. Sec. 270, Ch. 350, L. 1974; R.C.M. 1947, 66-2803; amd. Sec. 4, Ch. 546, L. 1979; amd. Sec. 3, Ch. 274, L. 1981.

37-68-103. Exemptions. (1) Nothing in this chapter shall be deemed to apply to the installation, alteration, or repair of electrical signal or communications equipment owned or operated by a public utility or a city. For purposes of this exemption, "communications equipment" includes telephone wire inside a customer's premises. Nothing in this chapter prohibits a public utility from doing inside wiring to install, alter, repair, or maintain electrical equipment, installations, or facilities in buildings owned by the public utility if the work is accomplished by an employee who is a licensed electrician. If the building owned by the public utility is open to the public and the inside wiring constitutes major renovation or construction, the installation, alteration, repair, or maintenance of electrical equipment, installations, or facilities is subject to permits and inspections required by law.

(2) The licensing or inspection provisions of this chapter do not apply to regularly employed maintenance electricians doing maintenance work on the business premises of their employer, nor do they apply to line work on the business premises of the employer when ordinary and customary in-plant or on-site installations, modifications, additions, or repairs are performed.

(3) Nothing in this chapter shall be construed to require an individual to hold a license while or for doing electrical work on his own property or residence provided that said property or residence is maintained for his own use.

(4) An individual, firm, partnership, or corporation may engage in business as an electrical contractor without an electrician's license if all electrical

work performed by such individual, firm, partnership, or corporation is under the direction, control, and supervision of a licensed master electrician or under the direction, control, and supervision of a journeyman electrician for residential construction consisting of less than five living units in a single structure.

(5) Any person who plugs in an electrical appliance where an approved electrical outlet is already installed shall not be considered as an installer.

(6) No provisions of this chapter shall in any manner interfere with, hamper, preclude, or prohibit any vendor of any electrical appliance from selling, delivering, and connecting any electrical appliance if the connection does not necessitate the installation of electrical wiring of the structure where the appliance is to be connected.

History: En. Sec. 12, Ch. 148, L. 1965; amd. Sec. 1, Ch. 423, L. 1973; amd. Sec. 1, Ch. 269, L. 1975; R.C.M. 1947, 66-2812; amd. Sec. 5, Ch. 546, L. 1979; amd. Sec. 1, Ch. 245, L. 1987.

Cross-References

Exceptions to electrical installation requirements, 50-60-602.

Part 2

State Electrical Board

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1874.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-68-201. Organization — meetings — quorum — rulemaking power — seal. (1) Each July the board shall elect from its membership a president, vice-president, and secretary-treasurer.

(2) The board shall meet quarterly and at such other times it considers necessary.

(3) A majority of the members of the board shall constitute a quorum for transaction of business.

(4) The board may:

(a) adopt rules for the administration of this chapter, for the licensing of electrical contractors, for continuing education, and for the examination and licensing of master and journeymen electricians;

(b) adopt a seal;

(c) cause the prosecution and enjoinder of persons violating this chapter.

History: (1), (2), (4)En. Sec. 5, Ch. 148, L. 1965; amd. Sec. 272, Ch. 350, L. 1974; amd. Sec. 11, Ch. 453, L. 1977; Sec. 66-2805, R.C.M. 1947; (3)En. Sec. 4, Ch. 148, L. 1965; amd. Sec. 1, Ch. 374, L. 1973; Sec. 66-2804, R.C.M. 1947; amd. and redes. 82A-1602.10 by Sec. 271, Ch. 350, L. 1974; amd. Sec. 58, Ch. 439, L. 1975; Sec. 82A-1602.10, R.C.M. 1947; R.C.M. 1947, 66-2805(1), (2)(a) thru (2)(c), 82A-1602.10(5); amd. Sec. 4, Ch. 245, L. 1987.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Seal defined, 1-4-201.

Manner of making seal, 1-4-202.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Affidavits, Title 26, ch. 1, part 10.

Duty of Department to provide facilities, 37-1-101.

Disrupting meeting as disorderly conduct, 45-8-101.

37-68-202. Compensation and expenses of board members. Each member of the board shall receive compensation and travel expenses as provided for in 37-1-133.

History: Ap. p. Sec. 4, Ch. 148, L. 1965; amd. Sec. 1, Ch. 374, L. 1973; Sec. 66-2804, R.C.M. 1947; amd. and redes. 82A-1602.10 by Sec. 271, Ch. 350, L. 1974; amd. Sec. 58, Ch. 439, L. 1975; Sec. 82A-1602.10, R.C.M. 1947; Ap. p. Sec. 5, Ch. 148, L. 1965; amd. Sec. 272, Ch. 350, L. 1974; amd. Sec. 11, Ch. 453, L. 1977; Sec. 66-2805, R.C.M. 1947; R.C.M. 1947, 66-2805(3), 82A-1602.10(4); amd. Sec. 33, Ch. 474, L. 1981.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-68-301. License required to engage in electrical work. A person may not engage in or work at the business, trade, or calling of electrical contractor, residential electrician, journeyman electrician, or master electrician in this state until he has received from the department a license or permit to work as an electrical contractor, residential electrician, journeyman electrician, or master electrician.

History: En. Sec. 6, Ch. 148, L. 1965; amd. Sec. 274, Ch. 350, L. 1974; R.C.M. 1947, 66-2806; amd. Sec. 6, Ch. 546, L. 1979.

Cross-References

Installation of new security alarm systems by electrician, 37-60-409.

37-68-302. Unauthorized use of title. No person, firm, partnership, corporation, or association shall assume or use the title or designation of licensed master electrician, licensed journeyman electrician, or residential electrician unless qualified and licensed under this chapter.

History: En. Sec. 8, Ch. 148, L. 1965; R.C.M. 1947, 66-2808; amd. Sec. 7, Ch. 546, L. 1979.

37-68-303. Apprentice may work under licensed electrician — record of apprentices. This chapter does not prohibit a person from working as an apprentice in the trade of electrician with an electrician licensed under this chapter and under rules made by the board. The name and residence of each apprentice and the name and residence of his employer shall be filed with the department, and a record shall be kept by the department showing the name and residence of each apprentice.

History: En. Sec. 17, Ch. 148, L. 1965; amd. Sec. 281, Ch. 350, L. 1974; R.C.M. 1947, 66-2817.

Cross-References

Apprenticeship, Title 39, ch. 6, part 1.

37-68-304. Master electricians — application — qualifications — contents of examination. (1) An applicant for a master electrician's license shall furnish written evidence that he is a graduate electrical engineer of an accredited college or university and has 1 year of practical electrical experience or that he is a graduate of an electrical trade school and has at least 4 years of practical experience in electrical work or that he has had at least 5 years' practical experience in planning, laying out, or supervising the installation and repair of wiring, apparatus, or equipment for electrical light, heat, and power.

(2) Applicants for license as a master electrician shall file an application on forms prescribed by the board and furnished by the department, together with the examination fee. The board shall, not less than 30 days prior to a scheduled written examination, notify each applicant that the evidence submitted with his application is sufficient to qualify him to take the written examination or that the evidence is insufficient and is rejected. If the application is rejected, the board shall set forth the reasons in the notice to the applicant and shall authorize the department to return the applicant's examination fee. The place of examinations shall be designated by the board, and examinations shall be held at least once a year and at other times as, in the opinion of the board, the number of applicants warrants.

(3) The written examination shall consist of at least 30 questions designed to fairly test the applicant's knowledge and his technical application in the following subjects:

(a) the national electrical code;

(b) cost estimating for electrical installments;

(c) procurement and handling of materials needed for electrical installations and repair;

(d) reading of blueprints for electrical work;

(e) drafting and layout of electrical circuits;

(f) knowledge of practical electrical theory.

History: En. Sec. 7, Ch. 148, L. 1965; amd. Sec. 275, Ch. 350, L. 1974; R.C.M. 1947, 66-2807(1); amd. Sec. 2, Ch. 245, L. 1987.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-68-305. Journeyman and residential electricians — application — qualifications — contents of examination. (1) An applicant for a journeyman electrician's license shall furnish written evidence that he has had at least 4 years' apprenticeship in the electrical trade or 4 years' practical experience in the wiring for, installing, and repairing of electrical apparatus and equipment for light, heat, and power. Applications for license and notice to the applicant shall be made and given as in the case of master electricians' licenses. The written examination for a journeyman's license shall consist of at least 30 questions designed to fairly test the applicant's knowledge and the technical application thereof in the following subjects:

(a) the Ohm's law;

(b) the national electrical code;

(c) layout and practical installation of electrical circuits.

(2) An applicant for a residential electrician's license shall furnish written evidence that he has had at least 2 years' apprenticeship in the electrical

trade or 2 years' practical experience in the wiring for, installing, and repairing of electrical apparatus and equipment for light, heat, and power in residential construction consisting of less than five living units in a single structure. Application for license and notice to the applicant is made and given as in the case of master electricians' licenses. The written examination for a residential electrician's license consists of at least 30 questions designed to fairly test the applicant's knowledge and the technical application thereof in the following subjects:

(a) the Ohm's law;

(b) the national electrical code;

(c) layout and practical installation of electrical circuits in residential construction consisting of less than five living units in a single structure.

History: En. Sec. 7, Ch. 148, L. 1965; amd. Sec. 275, Ch. 350, L. 1974; R.C.M. 1947, 66-2807(2); amd. Sec. 8, Ch. 546, L. 1979.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Apprenticeship, Title 39, ch. 6, part 1.

37-68-306. Temporary permits pending examination. The board may authorize the department to issue a temporary permit to engage in the work of a master electrician, journeyman electrician, or residential electrician to an applicant who furnishes evidence satisfactory to the board that he has the required experience to qualify for the examination and who pays the fee. A temporary permit continues in effect only until the next examination is given and may be revoked by the board at any time. If the applicant is granted a license, a fee paid for the temporary permit shall be applied to the fee required for a license.

History: En. Sec. 10, Ch. 148, L. 1965; amd. Sec. 277, Ch. 350, L. 1974; R.C.M. 1947, 66-2810; amd. Sec. 9, Ch. 546, L. 1979.

37-68-307. Examination procedure — issuance of master, journeyman, or residential electrician's license — expiration. (1) To insure impartiality, the examination for either the master's or journeyman's license shall be by numbers drawn by lot. A paper may not be marked with the name of an applicant, but shall be anonymously graded by the department. The examination passing grade is 75%.

(2) If it is determined that the applicant has passed the examination, the department, on payment by the applicant of the fee, shall issue to the applicant a license which authorizes him to engage in the business, trade, or calling of a residential electrician, journeyman electrician, or master electrician.

(3) Each original license expires on the July 15 which is at least 1 year but not more than 2 years subsequent to the date of issuance.

History: En. Sec. 7, Ch. 148, L. 1965; amd. Sec. 275, Ch. 350, L. 1974; R.C.M. 1947, 66-2807(3); amd. Sec. 10, Ch. 546, L. 1979.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

37-68-308. Licensure without examination of persons licensed locally. The board may authorize the department to issue a license as a master electrician, journeyman electrician, or residential electrician to an applicant without written examination on satisfactory proof that the applicant has the qualifications to apply for a license under this chapter and is the holder of a valid license issued by a city or other political subdivision of this state which provides for the examination and licensing of electricians.

History: **En. Sec. 11, Ch. 148, L. 1965; amd. Sec. 278, Ch. 350, L. 1974; R.C.M. 1947, 66-2811; amd. Sec. 11, Ch. 546, L. 1979.**

37-68-309. Electricians licensed by other states — reciprocity. To the extent that other states which provide for the licensing of electricians provide for similar action, the board may grant licenses to electricians licensed by other states on payment by the applicant of the required fee and on furnishing proof to the board that the applicant has qualifications at least equal to those provided herein for applicants for written examinations. Applicants who qualify for a license under this section are not required to take a written examination.

History: **En. Sec. 9, Ch. 148, L. 1965; amd. Sec. 276, Ch. 350, L. 1974; R.C.M. 1947, 66-2809.**

Cross-References

Recognition of out-of-state licenses during disaster or emergency, 10-3-204.

37-68-310. Annual renewal. Licenses of residential electricians, journeyman electricians, or master electricians, unless they have been suspended or revoked by the board, shall be renewed for a period of 1 year by the department on application for renewal made to the department prior to July 15 of the year in which the prior license expired and on the payment of an annual renewal fee. If application for renewal is not made prior to July 15, an additional fee prescribed by the board shall be paid on account of the delinquency in renewal. All applications for renewal must be made prior to August 15 of that year, otherwise the license is forfeited and the applicant is required to pass the examination and pay the fees required of applicants for original licenses.

History: **En. Sec. 7, Ch. 148, L. 1965; amd. Sec. 275, Ch. 350, L. 1974; R.C.M. 1947, 66-2807(4); amd. Sec. 12, Ch. 546, L. 1979; amd. Sec. 68, Ch. 345, L. 1981.**

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-68-311. Examination fee — annual fee — specific exemption for apprentices. (1) Master electricians who are not electrical contractors and journeyman or residential electricians installing or intending to install for hire electric wiring or equipment to convey electric current or apparatus to be operated by this current shall make application for a license to the department. The application shall be on a form furnished by the department and accompanied by an examination fee set by the board. The forms shall state the applicant's full name, his address, the extent of his experience, and other information required by the board. If the applicant has complied with the rules adopted by the board and, being qualified, has successfully completed the examination, he shall pay to the department an annual license fee set by the board for a master electrician's license or for a journeyman or a residential electrician's license, and upon receipt of the fee the department shall issue the proper license to the applicant.

(2) A person serving a 4-year electrician apprenticeship under the supervision of a licensed electrician is exempt from the licensing provision of this section during training. Credit for the time spent in an electrical school shall be given to the master electrician, journeyman electrician, residential electrician, or apprentice, up to a total of 2 years, on the 4-year requirement.

History: En. Sec. 15, Ch. 148, L. 1965; amd. Sec. 280, Ch. 350, L. 1974; R.C.M. 1947, 66-2815; amd. Sec. 13, Ch. 546, L. 1979.

37-68-312. Electrical contractor's license — application — issuance — fees — renewal. Each electrical contractor shall, before July 1 of each year, file with the department an application in writing for each firm operated by him in this state to obtain a license. A license may not be issued until the applicant meets the requirements and has paid to the department a license fee set by the board for each firm operated by him. Licenses shall bear the date of issue and expire on July 1 following the date of issue. An electrical contractor licensed under this chapter is entitled to have his license renewed for the ensuing year by payment to the department of the license fee before the date of expiration of the license.

History: En. Sec. 14, Ch. 148, L. 1965; amd. Sec. 279, Ch. 350, L. 1974; R.C.M. 1947, 66-2814; amd. Sec. 14, Ch. 546, L. 1979.

37-68-313. Reasonable fees — deposit of money collected. All fees established by the board under this chapter must be reasonably related to the respective program costs. Money collected by the department under this chapter shall be deposited in the state special revenue fund for the use of the board.

History: En. Sec. 19, Ch. 148, L. 1965; amd. Sec. 282, Ch. 350, L. 1974; R.C.M. 1947, 66-2819; amd. Sec. 15, Ch. 546, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.

Cross-References

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-68-314. Qualifications for licensing examination — when no discretion in board. A person applying for a license as a journeyman electrician or a residential electrician must be allowed by the state electrical board to take the required examination and be granted a license upon passing the examination if:

(1) he has completed an appropriate training program conducted by a bona fide union;

(2) he has completed the appropriate required apprenticeship; or

(3) he has worked in the electrical field for 10 years and is considered by his employer, as shown by a written statement of the employer, to be capable and qualified to take the examination for the license for which he is applying.

History: En. Sec. 1, Ch. 332, L. 1981; amd. Sec. 3, Ch. 245, L. 1987.

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

Apprenticeship, Title 39, ch. 6, part 1.

37-68-315 through 37-68-320 reserved.

37-68-321. Suspension or revocation of license. The board may suspend or revoke a license granted under this chapter for any of the following reasons:

(1) violation of this chapter, the national electrical code, or the rules of the board;

(2) any cause for which issuance of the license could have been denied had it existed and been known to the board;

(3) commission of any act of gross negligence, incompetency, or misconduct as may be determined by the board in the practice of a master, journeyman, or residential electrician or the business of an electrical contractor; or

(4) making a material misstatement, misrepresentation, or fraud in obtaining a license.

History: En. Sec. 5, Ch. 148, L. 1965; amd. Sec. 272, Ch. 350, L. 1974; amd. Sec. 11, Ch. 453, L. 1977; R.C.M. 1947, 66-2805(2)(d); amd. Sec. 16, Ch. 546, L. 1979.

Cross-References

Unfair trade practices and consumer protection, Title 30, ch. 14.

Duty of Department to investigate unprofessional conduct, 37-1-101.

Reporting of disciplinary actions against licensees, 37-1-105.

Duties of Director in investigation of unethical conduct, 37-1-121.

Duty of Board to adopt rules on conduct, 37-1-131.

Licensing investigation and review — record access, 37-1-135.

Disciplinary authority of boards — injunctions, 37-1-136.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-68-322. Penalty. (1) Any person or corporation violating any provision of this chapter shall upon conviction thereof:

(a) if a person, be punished by a fine not more than $500 or by imprisonment for a term not to exceed 6 months or by revocation of his license or by such fine, imprisonment, and revocation, in the discretion of the court; and

(b) if a corporation, be punished by a fine of not more than $1,000.

(2) Any officer or agent of a corporation or member or agent of a partnership or association who shall personally participate in or be accessory to any violation of this chapter by such partnership, association, corporation shall be subject to the penalties herein prescribed for individuals.

History: En. Sec. 20, Ch. 148, L. 1965; R.C.M. 1947, 66-2820.

Cross-References

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

CHAPTER 69

PLUMBERS

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Chapter Cross-References

Construction contracts, Title 18, ch. 2.

Building construction standards, Title 50, ch. 60.

Part 1

General

37-69-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of plumbers provided for in 2-15-1875.

(2) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(3) "Drainage system" means all the piping inside the walls of a building that conveys sewage or other liquid wastes outside the building to the building sewer but that does not extend more than 2 feet outside the building way.

(4) "Field of plumbing" means the business, trade, or work having to do with the installation, removal, alteration, or repair of plumbing and drainage systems or parts thereof.

(5) "Journeyman plumber" means a person who is authorized to make installation of all sanitary plumbing and potable water supply piping and appliances connected thereto.

(6) "Master plumber" means a person who is authorized by this chapter to plan, estimate, bid, contract for, and supervise plumbing work and who may do the work of a journeyman plumber.

(7) (a) Except as provided in subsection (7)(b), "plumbing system" means all potable water supply and distribution pipes, plumbing fixtures and traps, drainage and vent pipes, and building drains, including their respective joints and connections, devices, receptacles, and appurtenances within the property lines of any premises, up to 20 feet beyond the building foundation line, and includes potable water piping, water heaters, and vents for the premises.

(b) As defined in subsection (7)(a), "plumbing system" does not include water services installed and maintained by water districts or water user associations in which water service is installed by any qualified person appointed or hired by the administrative authority of the water system.

(8) "Public sewer system" means any common sewer carrying liquid wastes from two or more dwellings or any other facility that serves the public.

(9) "Public water supply" means any community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that serves 10 or more families or 25 or more persons on a regular and continuous basis.

History: En. 66-2401.1 by Sec. 227, Ch. 350, L. 1974; amd. Sec. 2, Ch. 497, L. 1975; R.C.M. 1947, 66-2401.1; amd. Sec. 4, Ch. 549, L. 1979; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 661, L. 1985.

37-69-102. Exceptions. (1) Licensure is not required in the following instances of plumbing installation:

(a) where an owner of a single-family residence used exclusively for his personal use makes the installation himself for all sanitary plumbing and potable water supply piping or where a mobile home dealer makes such installation to existing facilities as part of delivering and setting up a mobile home for a purchaser;

(b) in any mine, mill, smelter, refinery, or railroad;

(c) in a farm or ranch not connected to public water supply and sewage disposal systems;

(d) in cities, towns, water districts, and water user associations extending their own water and sewer mains;

(e) installation of water conditioner services in private dwellings;

(f) minor work by employees or agents of an appliance dealer incidental to the installation of an appliance purchased from the dealer; and

(g) installation of a water meter by a qualified person appointed by the administrative authority of the water system.

(2) This chapter shall not be construed to apply to or to affect plumbing installations in any mines, mills, smelters, refineries, public utilities, railroads, or plumbing installations on farms or ranches not connected to public water supply or sewage disposal systems.

History: (1)En. Sec. 1, Ch. 203, L. 1949; amd. Sec. 1, Ch. 185, L. 1961; amd. Sec. 1, Ch. 497, L. 1975; Sec. 66-2401, R.C.M. 1947; (2)En. Sec. 15, Ch. 251, L. 1959; amd. Sec. 1, Ch. 44, L. 1973; amd. Sec. 12, Ch. 497, L. 1975; Sec. 66-2426, R.C.M. 1947; R.C.M. 1947, 66-2401(2), 66-2426; amd. Sec. 2, Ch. 661, L. 1985.

Cross-References

Exceptions to plumbing installation requirements, 50-60-503.

Exceptions to penalty for violation of plumbing installation requirements, 50-60-515.

37-69-103. No penalty for hiring unlicensed plumber. This chapter may not be construed as imposing any penalty on any unlicensed person for hiring or contracting with an unlicensed person to do work in the field of plumbing. However, any person who himself engages in the field of plumbing at a time when he is not duly licensed is subject to the penalties imposed by this chapter.

History: En. Sec. 4, Ch. 251, L. 1959; amd. Sec. 8, Ch. 497, L. 1975; R.C.M. 1947, 66-2415; amd. Sec. 27, Ch. 22, L. 1979.

Part 2

Board of Plumbers

Part Cross-References

Allocation of boards for administrative purposes, 2-15-121.

Quasi-judicial boards, 2-15-124.

Board established, 2-15-1875.

Duties of Department, director, and boards, Title 37, ch. 1, part 1.

37-69-201. Chairman — quorum. (1) The board shall annually select a chairman from its members.

(2) A majority of the board constitutes a quorum.

History: (1)En. Sec. 3, Ch. 251, L. 1959; amd. Sec. 235, Ch. 350, L. 1974; Sec. 66-2414, R.C.M. 1947; (2)En. Sec. 9, Ch. 203, L. 1949; amd. Sec. 234, Ch. 350, L. 1974; Sec. 66-2409, R.C.M. 1947; R.C.M. 1947, 66-2409(1), 66-2414(part).

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Open meetings, Title 2, ch. 3, part 2.

Meeting defined, 2-3-202.

Duty of Department to provide facilities, 37-1-101.

Disrupting meeting as disorderly conduct, 45-8-101.

37-69-202. Rulemaking power — records. (1) The board may adopt rules necessary to carry out this chapter.

(2) The board shall adopt rules for the transaction of its business, and the department shall keep a record of the board's official actions.

History: (1)En. Sec. 9, Ch. 203, L. 1949; amd. Sec. 234, Ch. 350, L. 1974; Sec. 66-2409, R.C.M. 1947; (2)En. Sec. 3, Ch. 251, L. 1959; amd. Sec. 235, Ch. 350, L. 1974; Sec. 66-2414, R.C.M. 1947; R.C.M. 1947, 66-2409(2), 66-2414(part).

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Public records, Title 2, ch. 6.

Preservation of records, Title 22, ch. 3, part 2.

Duty of Department to keep records, 37-1-101.

37-69-203. Compensation of board members — expenses. A member of the board is entitled to compensation and travel expenses as provided for in 37-1-133.

History: En. Sec. 3, Ch. 203, L. 1949; amd. Sec. 16, Ch. 251, L. 1959; amd. Sec. 2, Ch. 185, L. 1961; amd. Sec. 143, Ch. 147, L. 1963; amd. Sec. 2, Ch. 186, L. 1965; amd. Sec. 229, Ch. 350, L. 1974; amd. Sec. 39, Ch. 439, L. 1975; amd. Sec. 4, Ch. 497, L. 1975; R.C.M. 1947, 66-2403(1); amd. Sec. 34, Ch. 474, L. 1981.

Part 3

Licensing

Part Cross-References

Licensing to follow contested case procedure, 2-4-631.

Duty of Board to adopt and enforce licensing and certification rules, 37-1-131.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Nondiscrimination in licensing, 49-3-204.

37-69-301. License required — temporary exception by municipal resolution when licensed plumber not available. Any person working at the field of plumbing in any incorporated city, town, or in any other area served by a public water supply or a public sewer system in this state, either as a master plumber or as a journeyman plumber, or who while working at the field of plumbing shall connect plumbing to or disconnect plumbing from a public water supply or public sewer system shall first secure a state license as hereinafter provided. The council or commission of any city or town or board of directors or managers of a water or sewer district or water utility, in cases where a duly licensed person or persons are not reasonably available, may by ordinance, rule, or resolution duly adopted and upon reasonable notice by certified letter to the board of plumbers and upon their approval, or after 30 days from the date of the postmark of the certified letter if the board fails to respond to the certified letter, authorize the practice in the field of plumbing by a person or persons who have not obtained the state licenses as hereinafter provided until such time as a duly licensed person or persons are reasonably available or until the board of plumbers withdraws its authorization.

History: **En. Sec. 1, Ch. 203, L. 1949; amd. Sec. 1, Ch. 185, L. 1961; amd. Sec. 1, Ch. 497, L. 1975; R.C.M. 1947, 66-2401(1); amd. Sec. 3, Ch. 661, L. 1985.**

Cross-References

"Registered mail" to include registered or certified mail, 1-1-202.

Metropolitan sanitary and/or storm sewer districts, Title 7, ch. 13, part 1.

Municipal sewage and/or water systems, Title 7, ch. 13, part 43.

37-69-302. Apprenticeship allowed. This chapter does not prohibit a person from working as an apprentice in the trade of plumbing with a plumber licensed by the department under the supervision of a licensed journeyman plumber. Only those apprentices registered with the department of labor and industry will be recognized by the department. The name and residence of each apprentice and the names and residences of their employers shall be filed with the department, and a record shall be kept by the department.

History: **En. Sec. 6, Ch. 203, L. 1949; amd. Sec. 232, Ch. 350, L. 1974; amd. Sec. 6, Ch. 497, L. 1975; R.C.M. 1947, 66-2406.**

Cross-References

Apprenticeship, Title 39, ch. 6, part 1.

37-69-303. Application — contents — requirements. A person, firm, or corporation desiring to engage in or work in the field of plumbing in this state, either as a master plumber or as a journeyman plumber, shall make application to the department by filing a written application stating his place of residence, age, experience, and the place where he has acquired his experience and shall at a time and place designated by the board be examined as to his qualifications for a license.

History: **En. Sec. 4, Ch. 203, L. 1949; amd. Sec. 230, Ch. 350, L. 1974; amd. Sec. 5, Ch. 497, L. 1975; R.C.M. 1947, 66-2404(part).**

37-69-304. Qualifications of applicants for journeyman plumber's license — restriction on authority. (1) The following requirements shall be met by applicants for a journeyman plumber's license:

(a) a specific record of 4 years' experience in the field of plumbing of a character satisfactory to the board. This experience requirement may be fulfilled by working 4 years in a major phase of the plumbing business or by completing an apprenticeship program meeting the standards set by the department of labor and industry or the United States department of labor, bureau of apprenticeship, or credit towards this experience requirement may be given for time spent attending an accredited trade or other school specializing in training of value in the field of plumbing and approved by the board.

(b) satisfactory completion of an examination conducted by the department, subject to 37-1-101(4), testing the applicant's knowledge of techniques and methods employed in the field of plumbing and establishing by practical demonstration his competence in the special skills required in the field of plumbing.

(2) A licensed journeyman plumber may perform work only in the employment of a licensed master plumber unless otherwise permitted by rule of the board.

History: En. Sec. 2, Ch. 203, L. 1949; amd. Sec. 1, Ch. 186, L. 1965; amd. Sec. 228, Ch. 350, L. 1974; amd. Sec. 3, Ch. 497, L. 1975; amd. Sec. 22, Ch. 101, L. 1977; R.C.M. 1947, 66-2402(2), (3).

Cross-References

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

Apprenticeship, Title 39, ch. 6, part 1.

37-69-305. Qualifications of applicants for master plumber's license — restriction on authority. (1) The following requirements must be met by an applicant for a master plumber's license:

(a) evidence of 4 years' experience as a licensed journeyman plumber in the field of plumbing, verified by time or pay records of actual plumbing experience;

(b) evidence of 3 years' experience working with a licensed master plumber or in a supervisory capacity in the field of plumbing, which may run concurrently with the requirement in subsection (1)(a); and

(c) satisfactory completion of an examination for master plumbers testing his knowledge of the field of plumbing and demonstrating his skill and ability in the field of plumbing.

(2) For purposes of subsection (1), a year's experience is 1,500 hours or more of work in a continuous 12-month period.

(3) A master plumber may not allow his license to be used by any person or firm, corporation, or business other than his own for the purpose of obtaining permits or for doing plumbing work under his license.

History: (1)En. Sec. 2, Ch. 203, L. 1949; amd. Sec. 1, Ch. 186, L. 1965; amd. Sec. 228, Ch. 350, L. 1974; amd. Sec. 3, Ch. 497, L. 1975; amd. Sec. 22, Ch. 101, L. 1977; Sec. 66-2402, R.C.M. 1947; (2)En. Sec. 4, Ch. 203, L. 1949; amd. Sec. 230, Ch. 350, L. 1974; amd. Sec. 5, Ch. 497, L. 1975; Sec. 66-2404, R.C.M. 1947; R.C.M. 1947, 66-2402(part), 66-2404(part); amd. Sec. 5, Ch. 549, L. 1979; amd. Sec. 1, Ch. 369, L. 1989.

Compiler's Comments

1989 Amendment: In (1)(a), before "journeyman plumber", inserted "licensed" and at end substituted "verified by time or pay records of actual plumbing experience" for "of a character satisfactory to the board"; in (1)(b), after "experience", substituted "working with a licensed master plumber or in a supervisory capacity" for "in supervisory capacities"; inserted (2) defining a year's experience; and made minor changes in phraseology.

Cross-References

Licensing investigation and review — record access, 37-1-135.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-69-306. Examination — issuance of license. (1) An applicant for a license to work in the field of plumbing shall be examined as to his qualifications by the department, subject to 37-1-101(4). The department shall examine each applicant for a license to determine his skill and qualifications as a master plumber or journeyman plumber.

(2) The applicant, upon successfully passing the examination prescribed by the board, shall be issued a license authorizing him to engage in the field of plumbing as a master plumber or journeyman plumber in the state of Montana.

(3) In the case of a firm or corporation, the examination and issuance of a license to an individual of the firm or to a principal of the firm or corporation satisfies the requirements of this chapter as to master plumbers but not as to journeyman plumbers. No individual, firm, or corporation may do the work of a master plumber unless licensed under this chapter.

History: (1), (2)En. Sec. 3, Ch. 203, L. 1949; amd. Sec. 16, Ch. 251, L. 1959; amd. Sec. 2, Ch. 185, L. 1961; amd. Sec. 143, Ch. 147, L. 1963; amd. Sec. 2, Ch. 186, L. 1965; amd. Sec. 229, Ch. 350, L. 1974; amd. Sec. 39, Ch. 439, L. 1975; amd. Sec. 4, Ch. 497, L. 1975; Sec. 66-2403, R.C.M. 1947; (3)En. Sec. 4, Ch. 203, L. 1949; amd. Sec. 230, Ch. 350, L. 1974; amd. Sec. 5, Ch. 497, L. 1975; Sec. 66-2404, R.C.M. 1947; R.C.M. 1947, 66-2403(2), 66-2404(part).

Cross-References

Duty of Department to administer and grade examinations, 37-1-101.

37-69-307. Examination fee and annual renewal fee. (1) No applicant for a master plumber's license may submit to the examinations prescribed by the board until he has deposited with the department an examination fee prescribed by the board, and no applicant for a journeyman plumber's license may submit to the examination prescribed by the board until he has deposited with the department an examination fee as prescribed by the board.

(2) A license when issued expires each year on the date established by rule of the department. A license issued to a master plumber or a journeyman plumber may be renewed annually without examination, at any time prior to its expiration, by a written request for its renewal directed to the department and the payment of a fee as set by the board for renewal of a master plumber's license or a fee as set by the board for renewal of a journeyman plumber's license. Renewal is for the period of 1 year.

(3) Fees prescribed by the board pursuant to this section must be reasonably related to the costs incurred by the board in carrying out its respective functions.

History: En. Sec. 5, Ch. 203, L. 1949; amd. Sec. 3, Ch. 185, L. 1961; amd. Sec. 1, Ch. 237, L. 1965; amd. Sec. 231, Ch. 350, L. 1974; amd. Sec. 10, Ch. 215, L. 1975; amd. Sec. 3, Ch. 541, L. 1977; R.C.M. 1947, 66-2405; amd. Sec. 6, Ch. 549, L. 1979; amd. Sec. 9, Ch. 390, L. 1983.

Cross-References

Suspension of license fees for persons in military service, 10-1-605.

Licensing boards to establish fees commensurate with costs, 37-1-134.

37-69-308. Deposit of fees. Money paid for license fees under this chapter shall be deposited in the state special revenue fund for the use of the board, subject to 37-1-101(6).

History: En. Sec. 7, Ch. 203, L. 1949; amd. Sec. 144, Ch. 147, L. 1963; amd. Sec. 233, Ch. 350, L. 1974; R.C.M. 1947, 66-2407; amd. Sec. 1, Ch. 277, L. 1983.

37-69-309. Plumbers licensed by other states — reciprocity. To the extent that other states that provide for the licensing of plumbers provide for similar action, the board may grant licenses to plumbers licensed by other states on payment by the applicant of the required fee and on furnishing proof to the board that the applicant has qualifications at least equal to those provided herein for applicants for written examinations. Applicants who qualify for a license under this section are not required to take a written examination. The board has authority to adopt rules necessary to implement this action.

History: En. Sec. 5, Ch. 661, L. 1985.

37-69-310 through 37-69-319 reserved.

37-69-320. License discipline. (1) The board may revoke, suspend, restrict, censure, or apply any other disciplinary treatment contemplated by 37-1-136 to any occupational licensee under this chapter for any one or more of the following causes:

(a) performance of plumbing work in the field of plumbing that is below the standards established by the Uniform Plumbing Code;

(b) inadequate supervision that causes or allows plumbing work in the field of plumbing that is below the standards established by the Uniform Plumbing Code;

(c) material deceit in procuring, attempting to procure, or aiding and abetting the procurement of an occupational license to practice in the field of plumbing;

(d) unfitness to provide services in the field of plumbing by reason of negligence or addiction to the use of habit-forming drugs;

(e) physical or mental incompetence which impairs the licensee's ability to deliver adequate service in the field of plumbing;

(f) willful or repeated violation of this chapter or rules adopted hereunder or willful or repeated violation of Title 50, chapter 60, part 5, or rules adopted thereunder; or

(g) unprofessional practice-related conduct as defined by rules adopted by the board.

(2) Any licensee disciplinary action under the jurisdiction of the board shall be conducted as a contested case under the provisions of the Montana Administrative Procedure Act.

History: En. Sec. 6, Ch. 661, L. 1985.

37-69-321. Repealed. Sec. 8, Ch. 661, L. 1985.

History: (1)En. Sec. 8, Ch. 203, L. 1949; Sec. 66-2408, R.C.M. 1947; (2)En. Sec. 8, Ch. 251, L. 1959; amd. Sec. 10, Ch. 497, L. 1975; Sec. 66-2419, R.C.M. 1947; R.C.M. 1947, 66-2408, 66-2419.

37-69-322. Revocation or suspension of license — procedure. (1) Proceedings for the revocation or suspension of a journeyman or master plumber's license may be taken by the board on its motion for matters in its knowledge or may be taken on the information of another. Accusations must be in writing and verified by a party familiar with the facts charged.

(2) On receiving the accusation, the board shall, if it considers the accusation sufficient, make an order setting it for hearing and requiring the accused to appear and answer the charge or accusation at the hearing.

(3) If the accused does not appear, the board may proceed and determine the accusation in his absence. If the accused confesses the accusation or refuses to answer the charge or if on the hearing the board finds the charge or accusation true, it may make an order either revoking the license of the accused or suspending it for a fixed period.

History: (1), (2)En. Sec. 9, Ch. 251, L. 1959; amd. Sec. 238, Ch. 350, L. 1974; amd. Sec. 11, Ch. 497, L. 1975; Sec. 66-2420, R.C.M. 1947; (3)En. Sec. 11, Ch. 251, L. 1959; amd. Sec. 239, Ch. 350, L. 1974; Sec. 66-2422, R.C.M. 1947; R.C.M. 1947, 66-2420, 66-2422.

Cross-References

Contested case procedure, Title 2, ch. 4, part 6.

Affidavits, Title 26, ch. 1, part 10.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-69-323. Restrictions on and responsibility for employees of master plumber. A licensed master plumber may employ only apprentice plumbers registered with the state department of labor and industry and only journeyman plumbers who are licensed by the state of Montana. A master plumber is responsible for assuring that all work performed by such employees is in compliance with the state plumbing code.

History: En. Sec. 2, Ch. 203, L. 1949; amd. Sec. 1, Ch. 186, L. 1965; amd. Sec. 228, Ch. 350, L. 1974; amd. Sec. 3, Ch. 497, L. 1975; amd. Sec. 22, Ch. 101, L. 1977; R.C.M. 1947, 66-2402(part).

Cross-References

Apprenticeship, Title 39, ch. 6, part 1.

37-69-324. Penalty. A person who works at the field of plumbing or maintains or conducts a plumbing business or an individual who connects or disconnects plumbing from a public water or sewer system in violation of any provisions of this chapter or at a time when he is not exempt from the provisions of this chapter pursuant to the provisions of a duly enacted and subsisting ordinance of a city or town is guilty of a misdemeanor and, upon conviction thereof in any court of competent jurisdiction, is guilty of a misdemeanor. However, this chapter may not be construed to apply to or affect plumbing or pipefitting as indicated in the 37-69-102 exceptions.

History: En. Sec. 11, Ch. 203, L. 1949; amd. Sec. 4, Ch. 185, L. 1961; amd. Sec. 7, Ch. 497, L. 1975; amd. Sec. 23, Ch. 101, L. 1977; R.C.M. 1947, 66-2411; amd. Sec. 7, Ch. 661, L. 1985.

Cross-References

"Misdemeanor" defined, 45-2-101.

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

Misdemeanor penalty when no penalty specified, 46-18-212.

CHAPTER 70

HEATING, VENTILATION, AIR CONDITIONING
(Repealed. Sec. 195, Ch. 575, L. 1981)

Chapter Compiler's Comments

Histories of Repealed Sections:

37-70-101. En. 66-3501 by Sec. 2, Ch. 504, L. 1975; R.C.M. 1947, 66-3501.

37-70-102. En. 66-3502 by Sec. 3, Ch. 504, L. 1975; R.C.M. 1947, 66-3502.

37-70-103. En. 66-3503 by Sec. 4, Ch. 504, L. 1975; R.C.M. 1947, 66-3503.

37-70-104. En. 66-3515 by Sec. 16, Ch. 504, L. 1975; R.C.M. 1947, 66-3515.

37-70-201. En. 82A-1602.29 by Sec. 1, Ch. 504, L. 1975; R.C.M. 1947, 82A-1602.29(5), (6).

37-70-202. En. 66-3504 by Sec. 5, Ch. 504, L. 1975; R.C.M. 1947, 66-3504.

37-70-203. En. 82A-1602.29 by Sec. 1, Ch. 504, L. 1975; R.C.M. 1947, 82A-1602.29(4); amd. Sec. 28, Ch. 22, L. 1979.

37-70-301. En. 66-3513 by Sec. 14, Ch. 504, L. 1975; R.C.M. 1947, 66-3513.

37-70-302. En. 66-3508 by Sec. 9, Ch. 504, L. 1975; R.C.M. 1947, 66-3508.

37-70-303. En. 66-3506 by Sec. 7, Ch. 504, L. 1975; R.C.M. 1947, 66-3506.

37-70-304. En. 66-3509 by Sec. 10, Ch. 504, L. 1975; R.C.M. 1947, 66-3509.

37-70-305. En. 66-3505 by Sec. 6, Ch. 504, L. 1975; amd. Sec. 31, Ch. 101, L. 1977; R.C.M. 1947, 66-3505.

37-70-306. En. 66-3511 by Sec. 12, Ch. 504, L. 1975; R.C.M. 1947, 66-3511.

37-70-307 through 37-70-310 reserved.

37-70-311. En. 66-3512 by Sec. 13, Ch. 504, L. 1975; R.C.M. 1947, 66-3512.

37-70-312. En. 66-3514 by Sec. 15, Ch. 504, L. 1975; R.C.M. 1947, 66-3514(part).

CHAPTER 71

PUBLIC CONTRACTORS

Part 1 — General Provisions

37-71-101. Definitions.
37-71-102. Administrative powers of department.
37-71-103. Rules.
37-71-104. Records.
37-71-105. Disposal of fees.

Part 2 — Licensing

37-71-201. Unlawful to engage in public contracting business without license.
37-71-202. Certain small or federal public contracts exempt.
37-71-203. Bids to show bidder is licensed.
37-71-204. Classes of licenses — fees.
37-71-205 through 37-71-210 reserved.
37-71-211. Application for license — contents.
37-71-212. Investigation of applicant — issuance of license.
37-71-213. Renewal — waiting period after cancellation.

Part 3 — Enforcement and Penalties

37-71-301. Complaints against licensee — grounds — investigation — hearing — suspension of license — appeals.
37-71-302. Penalty.

Part 1

General Provisions

37-71-101. Definitions. The following words, terms, and phrases in this chapter are, for the purposes hereof, defined as follows:

(1) "Department", unless the context clearly indicates otherwise, means the department of commerce as provided in 2-15-1801.

(2) "Field of contracting" includes but is not limited to the distinct fields of general contracting, mechanical contracting, electrical contracting, and plumbing, heating, and air-conditioning contracting.

(3) A "public contractor", within the meaning of this chapter, includes any person who submits a proposal to or enters into a contract for performing public construction work in the state with the federal government or state of Montana, or with any board, commission, or department thereof, or with any board of county commissioners or any city or town council, or with any agency of any of them, or with any other public board, body, commission, or agency authorized to let or award contracts for any public work when the contract cost, value, or price thereof exceeds the sum of $5,000.

(4) The term "public contractor" includes subcontractors undertaking to perform work within their field of contracting and within the limits of their

class of license covered by the original contract or any part thereof, the contract cost, value, or price of which exceeds the sum of $5,000.

History: (1)En. Sec. 1, Ch. 178, L. 1935; re-en. Sec. 2433.1, R.C.M. 1935; amd. Sec. 1, Ch. 195, L. 1967; amd. Sec. 12, Ch. 52, L. 1977; Sec. 84-3501, R.C.M. 1947; (2)En. Sec. 3, Ch. 178, L. 1935; re-en. Sec. 2433.3. R.C.M. 1935; amd. Sec. 143, Ch. 516, L. 1973; Sec. 84-3503, R.C.M. 1947; R.C.M. 1947, 84-3501, 84-3503(part); amd. Sec. 1, Ch. 152, L. 1983; amd. Sec. 1, Ch. 240, L. 1983; MCA 1981, 15-50-101; redes. 37-71-101 by Code Commissioner, 1983; 37-71-101(3) redes. 15-50-101 by Code Commissioner, 1985.

37-71-102. Administrative powers of department. The department is empowered to employ such assistance and to procure such records, supplies, and equipment as may be necessary to carry out the provisions of this chapter.

History: En. Sec. 3, Ch. 178, L. 1935; re-en. Sec. 2433.3, R.C.M. 1935; amd. Sec. 143, Ch. 516, L. 1973; R.C.M. 1947, 84-3503(part); amd. Sec. 2, Ch. 240, L. 1983; MCA 1981, 15-50-102; redes. 37-71-102 by Code Commissioner, 1983.

37-71-103. Rules. The department shall establish rules necessary for the effective implementation of the provisions of this chapter.

History: En. Sec. 5, Ch. 195, L. 1967; amd. Sec. 145, Ch. 516, L. 1973; R.C.M. 1947, 84-3515(part); amd. Sec. 3, Ch. 240, L. 1983; MCA 1981, 15-50-103; redes. 37-71-103 by Code Commissioner, 1983.

37-71-104. Records. The department shall maintain at Helena, Montana, open to public inspection during office hours, a complete indexed record of all applications and all licenses issued and all certificates of renewal and of cancellations or suspensions thereof and shall furnish a certified copy of any license issued, of renewal certificates, or of the cancellations or suspensions thereof, upon receipt of the sum of $1, and such certified copy shall be received in all courts and elsewhere as prima facie evidence of the facts stated therein.

History: En. Sec. 9, Ch. 178, L. 1935; re-en. Sec. 2433.9, R.C.M. 1935; R.C.M. 1947, 84-3509; amd. Sec. 4, Ch. 240, L. 1983; MCA 1981, 15-50-104; redes. 37-71-104 by Code Commissioner, 1983.

Cross-References

Public records generally, Title 2, ch. 6, part 1.

37-71-105. Disposal of fees. All moneys collected hereunder shall be deposited by the department with the state treasurer, who shall credit them to the general fund of the state.

History: En. Sec. 8, Ch. 178, L. 1935; re-en. Sec. 2433.8, R.C.M. 1935; amd. Sec. 2, Ch. 266, L. 1971; R.C.M. 1947, 84-3508; amd. Sec. 5, Ch. 240, L. 1983; MCA 1981, 15-50-105; redes. 37-71-105 by Code Commissioner, 1983.

Part 2

Licensing

Part Cross-References

Department of Commerce to determine residency of public contractors, 18-1-106.

37-71-201. Unlawful to engage in public contracting business without license. It shall be unlawful for any person or any combination of persons to engage in the business or act in the capacity of public contractor as herein defined within the state of Montana without having a license therefor as herein provided.

History: En. Sec. 2, Ch. 178, L. 1935; re-en. Sec. 2433.2, R.C.M. 1935; amd. Sec. 13, Ch. 52, L. 1977; R.C.M. 1947, 84-3502; MCA 1981, 15-50-201; redes. 37-71-201 by Code Commissioner, 1983.

37-71-202. Certain small or federal public contracts exempt. Nothing herein shall require any contractor to pay any license fee on any public contract project of a value less than $5,000, nor shall any contractor be required to have a license hereunder in order to submit a bid or proposal for contracts advertised to be let by the Montana highway commission where federal aid is obtained from the bureau of public roads or the department of agriculture of the United States, neither shall a successful bidder be required to be licensed as provided herein before the awarding and execution of any contract to be let by the state highway commission where federal aid from the bureau of public roads or the department of agriculture of the United States is involved.

History: En. Sec. 5, Ch. 178, L. 1935; re-en. Sec. 2433.5, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1939; amd. Sec. 2, Ch. 195, L. 1967; amd. Sec. 1, Ch. 180, L. 1974; R.C.M. 1947, 84-3505(6); amd. Sec. 2, Ch. 152, L. 1983; MCA 1981, 15-50-202; redes. 37-71-202 by Code Commissioner, 1983.

37-71-203. Bids to show bidder is licensed. All bids and proposals for the construction of any public contract project subject to the provisions of this chapter shall contain a statement showing that the bidder or contractor is duly and regularly licensed hereunder. The number and class of such license then held by such public contractor shall appear upon such bid or proposal, and no contract shall be awarded to any contractor unless he is the holder of a license in the class within which the value of the project shall fall as herein provided.

History: En. Sec. 7, Ch. 178, L. 1935; re-en. Sec. 2433.7, R.C.M. 1935; amd. Sec. 3, Ch. 141, L. 1967; R.C.M. 1947, 84-3507; MCA 1981, 15-50-203; redes. 37-71-203 by Code Commissioner, 1983; amd. Sec. 1, Ch. 87, L. 1985.

37-71-204. Classes of licenses — fees. (1) Within each field of contracting there shall be three classes of licenses issued under the provisions of this chapter, and such classes of licenses are hereby designated as Classes A, B, and C. Any applicant for a license under the provisions hereof shall specify in his application the field and the class of license applied for.

(2) In any field of contracting:

(a) the holder of a Class A license shall be entitled to engage in the public contracting business within the state without any limitation as to the value of a single public contract project; subject, however, to such prequalification requirements as may be imposed by the public body or bodies referred to in 37-71-101(3). At the time of making the application for such license, the applicant shall pay to the department a fee in the sum of $250.

(b) the holder of a Class B license shall be entitled to engage in the public contracting business within the state but shall not be entitled to engage in the construction of any single public contract project of a value in excess of $100,000 and shall pay to the department as a license fee the sum of $150 for such Class B license at the time of making application therefor;

(c) the holder of a Class C license shall be entitled to engage in the public contracting business within the state but shall not be entitled to engage in the construction of any single public contract project of a value in excess of $25,000 and shall pay to the department as a license fee the sum of $100 at the time of making application therefor.

(3) If a holder of a license for any class within a field of contracting applies for another license for the same class but within a different field of contracting, he shall pay a fee equal to 25% of the fee for the appropriate class of license as provided in subsection (2) to be licensed in the additional field. If an applicant for a license for any class within a field of contracting at the same time applies for a license for the same class but within a different field of contracting, he shall pay the fee for the appropriate class of license as provided in subsection (2) to be licensed in one of the fields of contracting plus 25% of the fee for the same class to be licensed in the other field.

History: En. Sec. 5, Ch. 178, L. 1935; re-en. Sec. 2433.5, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1939; amd. Sec. 2, Ch. 195, L. 1967; amd. Sec. 1, Ch. 180, L. 1974; R.C.M. 1947, 84-3505(1) thru (4); amd. Sec. 6, Ch. 240, L. 1983; MCA 1981, 15-50-204; redes. 37-71-204 by Code Commissioner, 1983.

37-71-205 through 37-71-210 reserved.

37-71-211. Application for license — contents. To obtain a license under this chapter, the applicant shall submit on such forms as the department shall prescribe an application, under oath, which shall contain a statement of the applicant's experience and qualifications as a contractor; the value and character of contract work completed and for whom performed during 5 years prior to the filing of such application; and a complete financial statement on such forms and disclosing such information as shall be required by the department. Such application shall also contain such other information as may be requested by the department under such rules as may be adopted by the department and which will assist the department in determining the applicant's fitness to act in the capacity of a public contractor as defined in this chapter. Such application shall also contain a statement that the applicant desires the issuance of a license under the terms of this chapter and shall specify the field of contracting and the class of license applied for.

History: En. Sec. 4, Ch. 178, L. 1935; re-en. Sec. 2433.4, R.C.M. 1935; R.C.M. 1947, 84-3504; amd. Sec. 9, Ch. 240, L. 1983; MCA 1981, 15-50-211; redes. 37-71-211 by Code Commissioner, 1983.

Cross-References

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-71-212. Investigation of applicant — issuance of license. It shall be the duty of the department to investigate and determine the applicant's fitness to act in the capacity of public contractor as defined in this chapter, and no license shall be issued to such applicant until the expiration of 10 days from and after the filing of such application. The license so issued in pursuance of the first application shall entitle the licensee to act as a public contractor within this state, subject to the limitations of such license, until the expiration of the then-current calendar year.

History: En. Sec. 6, Ch. 178, L. 1935; re-en. Sec. 2433.6, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1937; R.C.M. 1947, 84-3506(part); amd. Sec. 10, Ch. 240, L. 1983; MCA 1981, 15-50-212; redes. 37-71-212 by Code Commissioner, 1983.

37-71-213. Renewal — waiting period after cancellation. (1) Any license issued under the provisions of this chapter may be renewed for each successive calendar year by obtaining from the department a certificate of renewal thereof. For the purpose of obtaining such certificate of renewal, the licensee shall file with the department an application therefor, stating the field of contracting and class of license applied for and containing at least the same information as that required in the application for the original license. The application for such certificate of renewal must be made to the department on or before March 1 of each successive calendar year, and such renewal certificate shall be good for the then-current calendar year.

(2) At the time of filing the application for a certificate of renewal, the applicant shall pay to the department a license fee equal to 50% of the license fee for the original license, provided that if any applicant for a certificate of renewal shall apply for a renewal under a different field or class from the license theretofore issued to him, such new license shall be issued only upon the same showing and under the same terms and conditions and upon payment of the same fee required for the issuance of an original license.

(3) All certificates of renewal wherein the applicant does not apply for a change in the field or class of license shall be issued by the department to the applicant forthwith when the application is filed and the license renewal fee paid.

(4) After cancellation of a license, such licensee shall not be relicensed during the current calendar year in which the offense was committed.

History: (1) thru (3)En. Sec. 6, Ch. 178, L. 1935; re-en. Sec. 2433.6, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1937; Sec. 84-3506, R.C.M. 1947; (4)En. Sec. 11, Ch. 178, L. 1935; re-en. Sec. 2433.11, R.C.M. 1935; Sec. 84-3511, R.C.M. 1947; R.C.M. 1947, 84-3506(part), 84-3511; amd. Sec. 11, Ch. 240, L. 1983; MCA 1981, 15-50-213; redes. 37-71-213 by Code Commissioner, 1983.

Part 3

Enforcement and Penalties

37-71-301. Complaints against licensee — grounds — investigation — hearing — suspension of license — appeals. (1) Any person or other organization may file a duly verified complaint with the department charging that the licensee is guilty of one or more of the following acts or omissions:

(a) abandonment of any contract without legal excuse;

(b) diversion of funds or property received under express agreement for prosecution or completion of a specific contract under this chapter or for a specified purpose in the prosecution or completion of any contract and their application or use for any other contract, obligation, or purpose with intent to defraud or deceive creditors or the owner;

(c) the doing of any willful fraudulent act by the licensee as a public contractor in consequence of which another is substantially injured;

(d) the making of any false statement in any application for a license or renewal thereof;

(e) the failure to comply with the provisions of 18-1-112 requiring preference of products manufactured or produced in this state by Montana industry and labor.

(2) Upon the filing of such complaint, the department shall investigate the charge and within 60 days after the filing of such complaint render and file a decision, with the reasons therefor. If the department's decision be that the licensee has been guilty of any of such acts or omissions, the department shall suspend the contractor's license. At any time within 20 days thereafter, the complainant or the contractor may petition the department for a rehearing. In the order granting or denying such rehearing, the department shall set forth a statement of the particular grounds and reasons for the department's actions on such petition and shall mail a copy of such order to the parties who have appeared in support of or in opposition to the petition for rehearing. If a rehearing be granted, the department shall set the matter for further hearing on due notice to the parties and, within 30 days after submission of the matter, serve the department's decision after rehearing in like manner as an original decision.

(3) The filing of such petition for rehearing as to the department's actions in suspending or canceling such license shall suspend the operation of such action and permit the licensee to continue to do business as a public contractor pending final determination of the controversy.

(4) Within 30 days after the decision on rehearing, any party aggrieved by such decision of the department may appeal therefrom to the district court in and for the county in which the licensee under this chapter resides or does business as a public contractor by serving upon the department a notice of such appeal. The matter shall thereupon be heard de novo by the district court. An appeal may be taken from the decision of the district court in the same manner as appeals in other civil cases.

(5) In all cases where the licensee has filed his notice of appeal from the decision of the department or from the decision of the district court, such licensee shall be entitled to continue to do business as a public contractor pending final decision of the controversy.

History: En. Sec. 10, Ch. 178, L. 1935; re-en. Sec. 2433.10, R.C.M. 1935; amd. Sec. 1, Ch. 219, L. 1969; amd. Sec. 14, Ch. 52, L. 1977; R.C.M. 1947, 84-3510; amd. Sec. 12, Ch. 240, L. 1983; MCA 1981, 15-50-302; redes. 37-71-301 by Code Commissioner, 1983.

Cross-References

Suspension of license for violation of certain labor laws, 18-2-432.

Montana Rules of Appellate Procedure, Title 25, ch. 21.

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-71-302. Penalty. Any person or other organization acting in the capacity of public contractor within the meaning of this chapter without a license as herein provided shall be guilty of a misdemeanor and shall upon conviction thereof, if an individual, be punished by a fine of not to exceed $500 or by imprisonment in the county jail for a term not to exceed 6 months or by both such fine and imprisonment, in the discretion of the court. The same penalties shall apply upon conviction to any member of a partnership or to any construction, managing, or directing officer of any corporation or other organization consenting to, participating in, or aiding or abetting any such violation of this chapter.

History: En. Sec. 12, Ch. 178, L. 1935; re-en. Sec. 2433.12, R.C.M. 1935; amd. Sec. 15, Ch. 52, L. 1977; R.C.M. 1947, 84-3512; MCA 1981, 15-50-303(1); redes. 37-71-302 by Code Commissioner, 1983; Sec. 37-71-302(2) redes. 15-50-301(2) by Code Commissioner, 1985.

CHAPTER 72

CONSTRUCTION BLASTING

Part 1 — General

37-72-101. Construction blasting restrictions — license required — definitions — exemptions.
37-72-102. Penalty — injunction.

Part 2 — Regulation by Workers' Compensation Division

37-72-201. Rules for use of explosives — variances.
37-72-202. General rulemaking power.
37-72-203. Revocation, suspension, or refusal to renew license — grounds — procedure.

Part 3 — Licensing

37-72-301. General qualifications.
37-72-302. Training and experience requirements.
37-72-303. Licensure by examination — fee.
37-72-304. Issuance of license — fee.
37-72-305. Licensure of persons licensed by other jurisdictions.
37-72-306. Annual renewal.
37-72-307. License — form — pocket card.

Chapter Cross-References

Regulation of explosives and inflammable material by local governments, 7-33-4205.

Part 1

General

37-72-101. Construction blasting restrictions — license required — definitions — exemptions. (1) No person may engage in the practice of construction blasting unless licensed or under the supervision of a person licensed as a construction blaster by the department.

(2) For the purposes of this chapter:

(a) "construction blaster" means a person who engages in construction blasting;

(b) "construction blasting" means the use of explosives to:

(i) reduce, destroy, or weaken any residential, commercial, or other building; or

(ii) excavate any ditch, trench, cut, or hole or reduce, destroy, weaken, or cause a change in grade of any land formation in the construction of any building, highway, road, pipeline, sewerline, or electric or other utility line;

(c) "department" means the department of labor and industry;

(d) "explosive" has the meaning given in 61-1-506.

(3) Nothing in this chapter applies to the private or commercial use of explosives by persons engaged in farming, ranching, logging, geophysical work, drilling or development of water, oil, or gas wells, or mining of any kind or to the private use of explosives in the removal of stumps and rocks from land owned by the person using the explosives, except that the persons exempted from this chapter by this subsection must comply with rules adopted under

37-72-201(1)(c) and the provisions of 37-72-102 apply to a violation of those rules by an exempted person.

(4) This chapter does not apply to persons conducting blasting operations when the persons and operations are subject to rules adopted under and implementing 82-4-231(10)(e).

History: En. Sec. 1, Ch. 402, L. 1985; amd. Sec, 94, Ch. 370, L. 1987; amd. Sec. 54, Ch. 83, L. 1989; amd. Sec. 47, Ch. 613, L. 1989.

Compiler's Comments

1989 Amendments: Chapter 83 in (2)(d) changed "50-38-101" to "61-1-506"; and deleted (2)(e) that read: "(e) "magazine" has the meaning given in 50-38-101".

Chapter 613 in (1) changed "workers' compensation division" to "department"; inserted definition of Department; and deleted definition of Division. Amendment effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

Cross-References

Reckless or malicious use of explosives, 45-8-333.

Possession of explosives, 45-8-335.

37-72-102. Penalty — injunction. (1) A person convicted of violating any provision of this chapter or the rules of the department is guilty of a misdemeanor and shall be imprisoned in the county jail for a term not to exceed 6 months or fined an amount not to exceed $500, or both.

(2) The district court may enjoin any violation or threatened violation of the requirements of 37-72-101, 37-72-201, 37-72-202, or 37-72-301 through 37-72-307 or the rules of the department as a nuisance per se; and the department, the attorney general, or any county attorney may institute proceedings for an injunction.

History: En. Sec. 12, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

Issuance of injunctions on nonjudicial days, 3-1-302, 3-5-302.

Contempts, Title 3, ch. 1, part 5.

Injunctions, Rule 65, M.R.Civ.P. (see Title 25, ch. 20); Title 27, ch. 19.

Part 2

Regulation by Workers' Compensation Division

37-72-201. Rules for use of explosives — variances. (1) The department shall adopt rules governing the use of explosives in construction blasting. The rules must include provisions to:

(a) regulate the method of withdrawal of explosives from the construction magazine in which they are kept;

(b) prevent the accidental detonation of explosives;

(c) prevent injury from blasting to persons and property near blast sites;

(d) provide for notification of blasting to the owners or operators of gas and electric utilities; and

(e) regulate the drilling of holes for explosives and the loading and firing of explosives.

(2) The department shall adopt rules providing for variances from the rules required by subsection (1). Variances may be granted by the department

on a case-by-case basis for the purpose of individual construction blasting operations only if it is shown by the affidavit of a construction blaster licensed under this chapter that:

(a) compliance with the rule for which a variance is sought would be impracticable; and

(b) the proposed variance from department rules will not constitute a danger to property or public safety.

History: **En. Sec. 9, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.**

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

37-72-202. General rulemaking power. The department shall adopt rules to:

(1) implement the training and experience requirements of 37-72-302;

(2) prescribe the amount of the fees provided for in 37-72-301 and 37-72-303 through 37-72-306, which must be nonrefundable, in an amount commensurate with the cost of administering this chapter, and deposited in the state special revenue fund for the use of the department;

(3) regulate the use of explosives and grant variances under the provisions of 37-72-201, except that, unless the department is making an investigation under 37-72-203(2), the department does not have the power under this chapter to make inspections into construction blasting and may not adopt rules providing for such inspections or for inspectors to carry out such inspections;

(4) provide for the form of the license and pocket card provided for in 37-72-307; and

(5) provide for the conduct of the business of the department under this chapter and govern its proceedings under 37-72-203.

History: **En. Sec. 10, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.**

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

37-72-203. Revocation, suspension, or refusal to renew license — grounds — procedure. (1) The department may reprimand or revoke, suspend, or refuse to renew the license of a person found guilty of:

(a) fraud or deceit in obtaining a license;

(b) gross negligence, incompetency, or misconduct in the practice of construction blasting;

(c) a felony involving the use of explosives; or

(d) violation of the rules of the department.

(2) A person may make charges under subsection (1) against a licensee. The charges must be made by affidavit, subscribed and sworn to by the person making them, and filed with the department. The charges must be investigated by the department. Unless the department, after investigation, dismisses the charges as unfounded or trivial, it shall within 6 months after the date on which the charges were made give notice by mail to the licensee

of its intent to reprimand him or to revoke, suspend, or refuse to renew his license. The notice must contain those matters required by the Montana Administrative Procedure Act.

(3) The department may require a licensee to take a written or oral examination, or both, in a proceeding to reprimand or to revoke, suspend, or refuse to renew a license.

History: En. Sec. 11, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

"Destructive device" and "explosive" defined, 45-8-332.

Reckless or malicious use of explosives, 45-8-333.

Possession of destructive device, 45-8-334.

Possession of explosives, 45-8-335.

Possession of bomb or similar device prima facie evidence of unlawful purpose, 45-8-337.

Part 3

Licensing

Part Cross-References

Grounds for disciplinary action as grounds for license denial — conditions to new licenses, 37-1-137.

37-72-301. General qualifications. A person making initial application to the department for a license as a construction blaster shall:

(1) pay an application fee to the department; and

(2) furnish proof under oath, on a form provided by the department, that he:

(a) is at least 18 years old;

(b) is of good moral character;

(c) has not been convicted of a felony or misdemeanor involving the use of explosives;

(d) is not addicted to narcotic drugs or intemperate in the use of alcohol; and

(e) has satisfied the requirements for training and experience in construction blasting established by 37-72-302 and the rules of the department.

History: En. Sec. 2, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

37-72-302. Training and experience requirements. (1) A person applying for licensure as a construction blaster shall furnish proof, under oath, on a form provided by the department, that he has:

(a) successfully completed a training program in construction blasting that has been recognized by the explosives or construction industry and approved by the department; and

(b) at least 1 year of posttraining experience in construction blasting and because of that experience is familiar with the practical aspects of construction blasting.

(2) No training program may be approved by the department that does not offer comprehensive instruction in types of explosives, methods and purposes of their use, and safety and storage. The department shall by rule adopt a list of approved training programs.

History: En. Sec. 3, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

37-72-303. Licensure by examination — fee. (1) The department shall, at least once a year, administer an examination to applicants meeting the requirements of 37-72-301 and 37-72-302 and the rules adopted by the department. The department shall determine the subjects, scope, and acceptable level of performance for all examinations. The examination may be written, oral, or both. The examination shall at a minimum test the applicant's knowledge of the rules of the department governing construction blasting.

(2) An applicant for licensure by examination shall pay an examination fee to the department.

(3) An applicant for a license who has previously taken and failed the examination required by this section may retake it at any time within 2 years without again furnishing proof of compliance with 37-72-302, upon payment to the department of a reexamination fee.

History: En. Sec. 4, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

37-72-304. Issuance of license — fee. Upon receipt of a license fee, the department shall issue a license to each person who meets the requirements for licensure as prescribed in this chapter. The license must include the dates of issuance and expiration and a serial number. It must be signed by the department.

History: En. Sec. 5, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

37-72-305. Licensure of persons licensed by other jurisdictions. Upon receipt of a license fee, the department shall issue a license to any person fulfilling the requirements of 37-72-301(2)(a) through (2)(d) who holds a certificate, license, or permit, issued by another state or any agency of the United States, allowing him to supervise or engage in the practice of construction blasting if the department finds that the certificate, license, or permit was issued upon the satisfactory completion of requirements substantially equivalent to the requirements of 37-72-301 through 37-72-303.

History: En. Sec. 6, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

37-72-306. Annual renewal. (1) A license issued under this chapter expires January 1 following the date of its issuance or renewal and is invalid thereafter. The department shall notify each person licensed under this chapter of the date of the expiration of his license and the amount of his renewal fee. The notice must be mailed to each licensed construction blaster at his listed address at least 1 month before the expiration of his license.

(2) Renewal may be made by application during the 60 days prior to the expiration date. Failure on the part of a licensee to pay his renewal fee by the expiration date does not deprive him of the right to renew his license, but the fee must be increased 10% for each month or major portion thereof that the payment of the renewal fee is delayed after the expiration date. The maximum fee for delayed renewal may not exceed twice the normal renewal fee. Application for renewal following a lapse of 1 year or more is subject to review by the department, and the applicant may be required to successfully complete an examination.

History: En. Sec. 7, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

37-72-307. License — form — pocket card. (1) The department shall prescribe the form of license.

(2) The department shall annually prepare and deliver a pocket card certifying that the person whose name appears on the card is a licensed construction blaster and stating the period for which fees have been paid.

History: En. Sec. 8, Ch. 402, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

CHAPTERS 73 AND 74

RESERVED

CHAPTER 75

DIRECT-ENTRY MIDWIFERY

Part 1 — General Provisions

37-75-101. Parents' rights regarding birth of baby.
37-75-102. Affidavit required.

Chapter Cross-References

Limits on liability of health care provider in emergency situations, 27-1-734.

Part 1

General Provisions

37-75-101. Parents' rights regarding birth of baby. Except as otherwise provided by law, parents have a right to give birth where and with whom they choose.

History: En. Sec. 1, Ch. 493, L. 1989.

Compiler's Comments

Effective Date: Section 5, Ch. 493, L. 1989, provided that this section is effective April 11, 1989.

37-75-102. Affidavit required. A direct-entry midwife shall file an affidavit with the department of commerce certifying that he or she has completed the emergency childbirth training segment of a state-approved emergency medical training program within 12 months of April 11, 1989.

History: En. Sec. 2, Ch. 493, L. 1989.

Compiler's Comments

Effective Date: Section 5, Ch. 493, L. 1989, provided that this section is effective April 11, 1989.

TITLE 38

RESERVED

TITLE 39

LABOR

Ch.
1. Department of Labor and Industry.
2. The Employment Relationship.
3. Wages and Wage Protection.
4. Hours of Labor in Certain Employments.
5. The Employment Agency Act.
6. Apprenticeship.
7. Women in Employment — Displaced Homemakers.
Chapters 8 through 28 reserved.
29. Veterans' Public Employment Preference.
30. Handicapped Persons' Public Employment Preference.
31. Collective Bargaining for Public Employees.
32. Collective Bargaining for Nurses.
33. General Limitations on Collective Bargaining Rights.
34. Arbitration for Firefighters.
Chapters 35 through 50 reserved.
51. Unemployment Insurance.
Chapters 52 through 70 reserved.
71. Workers' Compensation.
72. Occupational Disease Act of Montana.
73. Silicosis Benefits.

CHAPTER 1

DEPARTMENT OF LABOR AND INDUSTRY

Part 1 — General Provisions

39-1-101. Definitions.
39-1-102. Duties of department.
39-1-103. Powers of department.
39-1-104. Cooperation with federal government.

Part 1

General Provisions

39-1-101. Definitions. As used in this chapter, unless the context requires otherwise the following definitions apply:

(1) "Commissioner" means the commissioner of labor and industry as provided for in 2-15-1701.

(2) "Department" means the department of labor and industry as provided for in 2-15-1701.

History: **En. 39-1-101 by Sec. 1, Ch. 397, L. 1979.**

39-1-102. Duties of department. The department shall enforce all the laws of Montana relating to hours of labor, conditions of labor, prosecution of employers who default in payment of wages, protection of employees, and all laws relating to child labor which regulate the employment of children in any manner and shall administer the laws of the state relating to free employment offices and all other state labor laws.

History: **En. Sec. 5, Ch. 177, L. 1951; amd. Sec. 1, Ch. 451, L. 1975; R.C.M. 1947, 41-1605(1); amd. Sec. 2, Ch. 397, L. 1979.**

Cross-References

Eight-hour day maximum, Art. XII, sec. 2, Mont. Const.

"Department" defined, 39-1-101.

Free public employment offices, 39-51-307.

Youth Conservation Corps within Department, 76-21-102.

39-1-103. Powers of department. (1) In discharging the duties imposed upon the department, the commissioner or his authorized representatives may administer oaths, examine witnesses under oath, take depositions or cause same to be taken, deputize any citizen 18 years of age or older to serve subpoenas upon witnesses, and issue subpoenas for the attendance of witnesses before him in the same manner as for attendance before district courts.

(2) The commissioner may likewise cause to be inspected any mine, factory, workshop, smelter, mill, warehouse, elevator, foundry, machine shop, or other industrial establishment.

(3) Nothing in this chapter applies to labor violations preempted by federal law or regulation.

History: **En. Sec. 5, Ch. 177, L. 1951; amd. Sec. 1, Ch. 451, L. 1975; R.C.M. 1947, 41-1605(2); amd. Sec. 50, Ch. 613, L. 1989.**

Compiler's Comments

1989 Amendment: Deleted (3) that provided section does not confer on Commissioner authority to interfere with matters under control of Workers' Compensation Division nor does Commissioner have duty to enforce workers' compensation laws, including safety laws. Amendment effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

Cross-References

Contested case procedure, Title 2, ch. 4, part 6.

Subpoena, Rule 45, M.R.Civ.P. (see Title 25, ch. 20).

Workers' Compensation Act, Title 39, ch. 71.

39-1-104. Cooperation with federal government. The department may and is hereby authorized to assist and cooperate with the wage and hour division and the children's bureau, U.S. department of labor, in the enforcement within this state of the Fair Labor Standards Act of 1938, approved June 25, 1938, and, subject to the regulations of the administrator of the wage and hour division or the chief of the children's bureau, as the case may be, and the laws of the state applicable to the receipt and expenditure of moneys, may be reimbursed by said wage and hour division or said children's bureau for the reasonable cost of such assistance and cooperation.

History: **En. Sec. 1, Ch. 56, L. 1939; R.C.M. 1947, 41-1137.**

CHAPTER 2

THE EMPLOYMENT RELATIONSHIP

Part 1 — General Provisions

39-2-101. Employment defined.
39-2-102. What belongs to employer.
39-2-103. Confidential employment.

Part 2 — General Obligations of Employers

39-2-201. Seats for employees.

Part 3 — General Prohibitions on Employers

39-2-301. Unlawful for employer to require employee to pay cost of medical examination as condition of employment.
39-2-302. Discharge or layoff of employee because of attachment or garnishment prohibited.
39-2-303. Deception as to character of employment, conditions of work, or existence of labor dispute prohibited.
39-2-304. Lie detector tests prohibited — regulation of blood and urine testing.
39-2-305. Employment of aliens not lawfully authorized to accept employment prohibited.
39-2-306. Employment of persons under eighteen as bartenders prohibited.

Part 4 — General Obligations of Employees

39-2-401. Duties of gratuitous employee.
39-2-402. Duties of employee for reward.
39-2-403. Duties of employee for his own benefit.
39-2-404. Employee must obey employer.
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39-2-406. Degree of skill required.
39-2-407. Duty to account.
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39-2-502. Termination by death or incapacity of employer.
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39-2-505. Repealed.

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39-2-701. Indemnification of employee.
39-2-702. Liability of employee for negligence.
39-2-703. Liability of railway corporation for negligence of fellow servants.
39-2-704. Liability of mining company for negligence of fellow servants.
39-2-705. Contract discharging employer liability for negligence void.

Part 8 — Blacklisting and Protection of Discharged Employees

39-2-801. Employee to be furnished on demand with reason for discharge.
39-2-802. Protection of discharged employees.
39-2-803. Blacklisting prohibited.
39-2-804. Violation of part a misdemeanor.

Part 9 — Wrongful Discharge From Employment

39-2-901. Short title.
39-2-902. Purpose.
39-2-903. Definitions.
39-2-904. Elements of wrongful discharge.
39-2-905. Remedies.
39-2-906 through 39-2-910 reserved.
39-2-911. Limitation of actions.
39-2-912. Exemptions.
39-2-913. Preemption of common-law remedies.
39-2-914. Arbitration.

Chapter Cross-References

Veterans — employment, Title 10, ch. 2, part 2.

Arbitration between employer and employee, Title 27, ch. 5.

Labor disputes — injunctions not allowed, 27-19-103.

Veterans' public employment preference, Title 39, ch. 29.

Handicapped persons' public employment preference, Title 39, ch. 30.

Child labor, Title 41, ch. 2.

Part 1

General Provisions

39-2-101. Employment defined. The contract of employment is a contract by which one, who is called the employer, engages another, who is called the employee, to do something for the benefit of the employer or a third person.

History: En. Sec. 2650, Civ. C. 1895; re-en. Sec. 5241, Rev. C. 1907; re-en. Sec. 7756, R.C.M. 1921; Cal. Civ. C. Sec. 1965; Field Civ. C. Sec. 1004; re-en. Sec. 7756, R.C.M. 1935; R.C.M. 1947, 41-101.

39-2-102. What belongs to employer. Everything which an employee acquires by virtue of his employment, except the compensation, if any, which is due to him from his employer, belongs to the latter, whether acquired lawfully or unlawfully or during or after the expiration of the term of his employment.

History: En. Sec. 2680, Civ. C. 1895; re-en. Sec. 5263, Rev. C. 1907; re-en. Sec. 7778, R.C.M. 1921; Cal. Civ. C. Sec. 1985; Field Civ. C. Sec. 1018; re-en. Sec. 7778, R.C.M. 1935; R.C.M. 1947, 41-211.

Cross-References

"Employment" defined, 39-2-101.

39-2-103. Confidential employment. The obligations peculiar to confidential employments are defined in the laws relating to trusts and fiduciary relationships.

History: En. Sec. 2687, Civ. C. 1895; re-en. Sec. 5270, Rev. C. 1907; re-en. Sec. 7785, R.C.M. 1921; Cal. Civ. C. Sec. 1992; Field Civ. C. Sec. 1025; re-en. Sec. 7785, R.C.M. 1935; R.C.M. 1947, 41-218; amd. Sec. 3, Ch. 397, L. 1979.

Cross-References

Trust code, Title 72, ch. 33 through 36.

Part 2

General Obligations of Employers

Part Cross-References

Hazardous chemicals in the workplace, Title 50, ch. 78.

39-2-201. Seats for employees. (1) Every employer in any manufacturing, mechanical, or mercantile establishment; laundry, hotel, or restaurant; or other establishment employing any person shall provide suitable seats for all employees and shall permit them to use such seats when they are not employed in the active duties of their employment.

(2) Any employer who shall fail, neglect, or refuse to provide suitable seats, as provided in this section, or who shall permit or suffer any overseer, superintendent, or other agent of any such employer to violate any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined for each offense not less than $50 or more than $200 or be imprisoned in the county jail for a period of not less than 10 or more than 60 days or both such fine and imprisonment.

History: (1)En. Sec. 2, Ch. 108, L. 1913; amd. Sec. 2, Ch. 18, L. 1917; re-en. Sec. 2, Ch. 70, L. 1917; re-en. Sec. 3077, R.C.M. 1921; re-en. Sec. 3077, R.C.M. 1935; amd. Sec. 22, Ch. 535, L. 1975; Sec. 41-1119, R.C.M. 1947; (2)En. Sec. 3, Ch. 108, L. 1913; amd. Sec. 3, Ch. 18, L. 1917; re-en. Sec. 3, Ch. 70, L. 1917; re-en. Sec. 3078, R.C.M. 1921; re-en. Sec. 3078, R.C.M. 1935; amd. Sec. 1, Ch. 51, L. 1971; Sec. 41-1120, R.C.M. 1947; R.C.M. 1947, 41-1119, 41-1120.

Cross-References

"Employment" defined, 39-2-101.

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

Part 3

General Prohibitions on Employers

Part Cross-References

Employer may not discharge, discipline, or refuse to hire a person because of imposition of income withholding, 40-5-422.

39-2-301. Unlawful for employer to require employee to pay cost of medical examination as condition of employment. (1) It shall be unlawful for any employer to require any employee or applicant for employment to pay the cost of a medical examination or the cost of furnishing any records of such examination as a condition of employment.

(2) The term "employer", as used in this section, shall mean and include an individual, a partnership, an association, a corporation, a legal representative, trustee, receiver, trustee in bankruptcy, and any common carrier by rail, motor, water, air, or express company doing business in or operating within the state.

(3) The term "employee", as used in this section, shall mean and include any person who may be permitted, required, or directed by any employer, as defined in subsection (2) of this section, in consideration of direct or indirect gain or profit to engage in any employment.

(4) Any employer violating the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine in any sum not exceeding $100 for each such offense.

History: En. Secs. 1, 2, 3, 4, Ch. 47, L. 1953; R.C.M. 1947, 41-113, 41-114, 41-115, 41-116.

Cross-References
"Employment" defined, 39-2-101.
Classification of offenses, 45-1-201.
"Misdemeanor" defined, 45-2-101.

39-2-302. Discharge or layoff of employee because of attachment or garnishment prohibited. No employer shall discharge or lay off an employee because of attachment or garnishment served on the employer against the wages of the employee.

History: En. Sec. 1, Ch. 245, L. 1969; R.C.M. 1947, 41-305.1.

Cross-References
Partial exemption of wages from execution, 25-13-614.

39-2-303. Deception as to character of employment, conditions of work, or existence of labor dispute prohibited. (1) No one doing business in this state shall induce, influence, persuade, or engage workmen to change from one place to another in this state through or by means of deception, misrepresentation, or false advertising concerning the kind or character of the work, the sanitary or other conditions of employment, or as to the existence of a strike or other trouble pending between the employer and the employees at the time of or immediately prior to such engagement. Failure to state in any advertisement, proposal, or contract for the employment of workmen that there is a strike, lockout, or other labor trouble at the place of the proposed employment when in fact such strike, lockout, or other trouble then actually exists at such place shall be deemed a false advertisement and misrepresentation for the purpose of this section.

(2) Any workman influenced, induced, persuaded, or engaged through or by means of any of the things prohibited by subsection (1) of this section has a right of action for recovery of all damages that he had sustained in consequence of the deception, misrepresentation, or false advertising used to induce him to change his place of employment against anyone directly or indirectly procuring such change, and in addition thereto, he shall recover reasonable attorneys' fees to be fixed by the court and taxed as costs in any judgment recovered.

History: En. 41-118 by Sec. 2, Ch. 513, L. 1973; R.C.M. 1947, 41-118.

Cross-References
Attorneys' fees, Title 25, ch. 10, part 3.
"Employment" defined, 39-2-101.

39-2-304. Lie detector tests prohibited — regulation of blood and urine testing. (1) No person, firm, corporation, or other business entity or representative thereof shall require:

(a) as a condition for employment or continuation of employment, any person to take a polygraph test or any form of a mechanical lie detector test;

(b) as a condition for employment, any person to submit to a blood or urine test, except for employment in hazardous work environments or in jobs the primary responsibility of which is security, public safety, or fiduciary responsibility; and

(c) as a condition for continuation of employment, any employee to submit to a blood or urine test unless the employer has reason to believe that the employee's faculties are impaired on the job as a result of alcohol consumption or illegal drug use.

(2) Prior to the administration of a drug or alcohol test, the person, firm, corporation, or other business entity or its representative shall adopt a written testing procedure and make it available to all persons subject to testing. A testing procedure must provide for the:

(a) collection of a blood or urine specimen in a manner that minimizes invasion of personal privacy while ensuring the integrity of the collection process;

(b) collection of a quantity of specimen sufficient to ensure the administration of several tests;

(c) collection, storage, and transportation of the specimen in tamper-proof containers;

(d) adoption of chain-of-custody documentation procedures identifying how the specimen was handled and tested;

(e) verification of test results by two or more different testing procedures before judging a test positive; and

(f) prohibition of the release of test results, except as authorized by the person tested or as required by a court of law.

(3) The person, firm, corporation, or other business entity or its representative shall provide a copy of drug or alcohol test results to the person tested and provide him the opportunity, at the expense of the person requiring the test, to obtain a confirmatory test of the blood or urine by an independent laboratory selected by the person tested. The person tested must be given the opportunity to rebut or explain the results of either test or both tests.

(4) Adverse action may not be taken against a person tested under subsections (1)(b), (1)(c), (2), and (3) if the person tested presents a reasonable explanation or medical opinion indicating that the results of the test were not caused by alcohol consumption or illegal drug use.

(5) A person who violates this section is guilty of a misdemeanor.

History: En. Secs. 1, 2, Ch. 46, L. 1974; R.C.M. 1947, 41-119, 41-120; amd. Sec. 1, Ch. 482, L. 1987.

Cross-References

Right to equal protection of the laws, Art. II, sec. 4, Mont. Const.

Licensing and regulation of polygraph examiners, Title 37, ch. 62.

"Employment" defined, 39-2-101.

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

Penalty for misdemeanor, 46-18-212.

39-2-305. Employment of aliens not lawfully authorized to accept employment prohibited. (1) No employer may knowingly employ an alien who is not lawfully authorized to accept employment.

(2) A person convicted of violating this section shall be fined no more than $300.

(3) The department of labor and industry or a person harmed by a violation of this section may sue to enjoin an employer from violating this section and to gain other appropriate relief.

History: En. 41-121 by Sec. 1, Ch. 56, L. 1977; R.C.M. 1947, 41-121.

Cross-References

Injunctions, Title 27, ch. 19.

"Employment" defined, 39-2-101.

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

39-2-306. Employment of persons under eighteen as bartenders prohibited. (1) No person under 18 years of age shall be employed as a bartender, waiter, or waitress whose duty is to serve customers purchasing liquors, beer, or wines in any establishment which sells liquors, beer, or wines at retail.

(2) Any retail vendor of liquors, beer, or wines who employs any such person under the age of 18 years is guilty of a misdemeanor.

History: (1)En. Sec. 1, Ch. 114, L. 1941; amd. Sec. 11, Ch. 240, L. 1971; amd. Sec. 17, Ch. 94, L. 1973; Sec. 41-1135, R.C.M. 1947; (2)En. Sec. 2, Ch. 114, L. 1941; amd. Sec. 12, Ch. 240, L. 1971; amd. Sec. 18, Ch. 94, L. 1973; Sec. 41-1136, R.C.M. 1947; R.C.M. 1947, 41-1135, 41-1136.

Cross-References

Age of majority, Art. II, sec. 14, Mont. Const.

Alcoholic beverages — age restrictions, 16-3-301, 16-6-305.

"Employment" defined, 39-2-101.

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

Penalty for misdemeanor, 46-18-212.

Part 4

General Obligations of Employees

39-2-401. Duties of gratuitous employee. (1) One who without consideration undertakes to do a service for another is not bound to perform the same, but if he actually enters upon its performance, he must use at least slight care and diligence therein.

(2) One who by his own special request induces another to entrust him with the performance of a service must perform the same fully. In other cases, one who undertakes a gratuitous service may relinquish it at any time.

(3) A gratuitous employee who accepts a written power of attorney must act under it so long as it remains in force or until he gives notice to his employer that he will not do so.

History: (1)En. Sec. 2670, Civ. C. 1895; re-en. Sec. 5253, Rev. C. 1907; re-en. Sec. 7768, R.C.M. 1921; Cal. Civ. C. Sec. 1975; Field Civ. C. Sec. 1008; re-en. Sec. 7768, R.C.M. 1935; Sec. 41-201, R.C.M. 1947; (2)En. Sec. 2671, Civ. C. 1895; re-en. Sec. 5254, Rev. C. 1907; re-en. Sec. 7769, R.C.M. 1921; Cal. Civ. C. Sec. 1976; Field Civ. C. Sec. 1009; re-en. Sec. 7769, R.C.M. 1935; Sec. 41-202, R.C.M. 1947; (3)En. Sec. 2672, Civ. C. 1895; re-en. Sec. 5255, Rev. C. 1907; re-en. Sec. 7770, R.C.M. 1921; Cal. Civ. C. Sec. 1977; Field Civ. C. Sec. 1010; re-en. Sec. 7770, R.C.M. 1935; Sec. 41-203, R.C.M. 1947; R.C.M. 1947, 41-201, 41-202, 41-203.

Cross-References

"Good Samaritan" law — accidents, 27-1-714.

"Good Samaritan" law — food donations, 27-1-716.

Revocation of power of attorney, 72-5-502.

39-2-402. Duties of employee for reward. One who for a good consideration agrees to serve another must perform the service and must use ordinary care and diligence therein so long as he is thus employed.

History: En. Sec. 2673, Civ. C. 1895; re-en. Sec. 5256, Rev. C. 1907; re-en. Sec. 7771, R.C.M. 1921; Cal. Civ. C. Sec. 1978; Field Civ. C. Sec. 1011; re-en. Sec. 7771, R.C.M. 1935; R.C.M. 1947, 41-204.

39-2-403. Duties of employee for his own benefit. One who is employed at his own request to do that which is more for his own advantage than for that of his employer must use great care and diligence therein to protect the interest of the latter.

History: En. Sec. 2674, Civ. C. 1895; re-en. Sec. 5257, Rev. C. 1907; re-en. Sec. 7772, R.C.M. 1921; Cal. Civ. C. Sec. 1979; Field Civ. C. Sec. 1012; re-en. Sec. 7772, R.C.M. 1935; R.C.M. 1947, 41-205.

39-2-404. Employee must obey employer. An employee must substantially comply with all the directions of his employer concerning the service on which he is engaged, except where such obedience is impossible or unlawful or would impose new and unreasonable burdens upon the employee.

History: En. Sec. 2676, Civ. C. 1895; re-en. Sec. 5259, Rev. C. 1907; re-en. Sec. 7774, R.C.M. 1921; Cal. Civ. C. Sec. 1981; Based on Field Civ. C. Sec. 1014; re-en. Sec. 7774, R.C.M. 1935; R.C.M. 1947, 41-207.

Cross-References

Termination of employment by employer, 39-2-503.

39-2-405. Employee must conform to usage. An employee must perform his service in conformity to the usage of the place of performance unless otherwise directed by his employer or unless it is impracticable or manifestly injurious to his employer to do so.

History: En. Sec. 2677, Civ. C. 1895; re-en. Sec. 5260, Rev. C. 1907; re-en. Sec. 7775, R.C.M. 1921; Cal. Civ. C. Sec. 1982; Field Civ. C. Sec. 1015; re-en. Sec. 7775, R.C.M. 1935; R.C.M. 1947, 41-208.

39-2-406. Degree of skill required. (1) An employee is bound to exercise a reasonable degree of skill unless his employer has notice before employing him of his want of skill.

(2) An employee is always bound to use such skill as he possesses, so far as the same is required, for the service specified.

History: (1)En. Sec. 2678, Civ. C. 1895; re-en. Sec. 5261, Rev. C. 1907; re-en. Sec. 7776, R.C.M. 1921; Cal. Civ. C. Sec. 1983; Field Civ. C. Sec. 1016; re-en. Sec. 7776, R.C.M. 1935; Sec. 41-209, R.C.M. 1947; (2)En. Sec. 2679, Civ. C. 1895; re-en. Sec. 5262, Rev. C. 1907; re-en. Sec. 7777, R.C.M. 1921; Cal. Civ. C. Sec. 1984; Based on Field Civ. C. Sec. 1017; re-en. Sec. 7777, R.C.M. 1935; Sec. 41-210, R.C.M. 1947; R.C.M. 1947, 41-209, 41-210.

39-2-407. Duty to account. An employee must, on demand, render to his employer as often as may be reasonable just accounts of all his transactions in the course of his service and must, without demand, give prompt notice to his employer of everything which he receives for his account.

History: En. Sec. 2681, Civ. C. 1895; re-en. Sec. 5264, Rev. C. 1907; re-en. Sec. 7779, R.C.M. 1921; Cal. Civ. C. Sec. 1986; Field Civ. C. Sec. 1019; re-en. Sec. 7779, R.C.M. 1935; R.C.M. 1947, 41-212.

39-2-408. Duty of employee regarding items received on account of his employer. An employee who receives anything on account of his employer in any capacity other than that of a mere servant is not bound to deliver it to him until demanded and is not at liberty to send it to him from a distance, without demand, in any mode involving greater risk than its retention by the employee himself.

History: En. Sec. 2682, Civ. C. 1895; re-en. Sec. 5265, Rev. C. 1907; re-en. Sec. 7780, R.C.M. 1921; Cal. Civ. C. Sec. 1987; Field Civ. C. Sec. 1020; re-en. Sec. 7780, R.C.M. 1935; R.C.M. 1947, 41-213.

Cross-References

"Servant" defined, 39-2-601.

39-2-409. Preference to be given to employer's business. An employee who has any business to transact on his own account similar to that entrusted to him by his employer must always give the latter the preference.

History: En. Sec. 2683, Civ. C. 1985; re-en. Sec. 5266, Rev. C. 1907; re-en. Sec. 7781, R.C.M. 1921; Cal. Civ. C. Sec. 1988; Based on Field Civ. C. Sec. 1021; re-en. Sec. 7781, R.C.M. 1935; R.C.M. 1947, 41-214.

39-2-410. Responsibility of employee for substitute. An employee who is expressly authorized to employ a substitute is liable to his principal only for want of ordinary care in his selection. The substitute is directly responsible to the principal.

History: En. Sec. 2684, Civ. C. 1895; re-en. Sec. 5267, Rev. C. 1907; re-en. Sec. 7782, R.C.M. 1921; Cal. Civ. C. Sec. 1989; Field Civ. C. Sec. 1022; re-en. Sec. 7782, R.C.M. 1935; R.C.M. 1947, 41-215.

39-2-411. Surviving employee. Where service is to be rendered by two or more persons jointly and one of them dies, the survivor must act alone if the service to be rendered is such as he can rightly perform without the aid of the deceased person, but not otherwise.

History: En. Sec. 2686, Civ. C. 1895; re-en. Sec. 5269, Rev. C. 1907; re-en. Sec. 7784, R.C.M. 1921; Cal. Civ. C. Sec. 1991; Field Civ. C. Sec. 1024; re-en. Sec. 7784, R.C.M. 1935; R.C.M. 1947, 41-217.

Part 5

Termination of Employment

39-2-501. Termination of employment generally. Every employment is terminated by:

(1) the expiration of its appointed term;
(2) the extinction of its subject;
(3) the death of the employee; or
(4) his legal incapacity to act as such.

History: En. Sec. 2701, Civ. C. 1895; re-en. Sec. 5272, Rev. C. 1907; re-en. Sec. 7787, R.C.M. 1921; Cal. Civ. C. Sec. 1997; Field Civ. C. Sec. 1027; re-en. Sec. 7787, R.C.M. 1935; R.C.M. 1947, 41-302.

Cross-References

Contract not enforceable against employee beyond 2 years, 28-2-722.

"Employment" defined, 39-2-101.

39-2-502. Termination by death or incapacity of employer. (1) Every employment in which the power of the employee is not coupled with an interest in its subject is terminated by notice to him of:

(a) the death of the employer; or
(b) his legal incapacity to contract.

(2) An employee, unless the term of his service has expired or unless he has a right to discontinue it at any time without notice, must continue his service after notice of the death or incapacity of his employer, so far as is necessary to protect from serious injury the interests of the employer's successor in interest, until a reasonable time after notice of the facts has been communicated to such successor. The successor must compensate the employee for such service according to the terms of the contract of employment.

History: (1)En. Sec. 2700, Civ. C. 1895; re-en. Sec. 5271, Rev. C. 1907; re-en. Sec. 7786, R.C.M. 1921; Cal. Civ. C. Sec. 1996; Field Civ. C. Sec. 1026; re-en. Sec. 7786, R.C.M. 1935; Sec. 41-301, R.C.M. 1947; (2)En. Sec. 2702, Civ. C. 1895; re-en. Sec. 5273, Rev. C. 1907; re-en. Sec. 7788, R.C.M. 1921; Cal. Civ. C. Sec. 1998; Field Civ. C. Sec. 1028; re-en. Sec. 7788, R.C.M. 1935; Sec. 41-303, R.C.M. 1947; R.C.M. 1947, 41-301, 41-303.

Cross-References

"Employment" defined, 39-2-101.

39-2-503. Termination at will. An employment having no specified term may be terminated at the will of either party on notice to the other, except where otherwise provided by this chapter, 28-10-301 through 28-10-303, 28-10-502, 30-11-601 through 30-11-605, and 39-2-302.

History: En. Sec. 2703, Civ. C. 1895; re-en. Sec. 5274, Rev. C. 1907; re-en. Sec. 7789, R.C.M. 1921; Cal. Civ. C. Sec. 1999; Field Civ. C. Sec. 1029; re-en. Sec. 7789, R.C.M. 1935; amd. Sec. 2, Ch. 245, L. 1969; R.C.M. 1947, 41-304; amd. Sec. 4, Ch. 397, L. 1979.

Cross-References

"Employment" defined, 39-2-101.

Employee's right to disobey impossible, unlawful, or unreasonable commands, 39-2-404.

39-2-504. Repealed. Sec. 10, Ch. 641, L. 1987.

History: En. Sec. 2704, Civ. C. 1895; re-en. Sec. 5275, Rev. C. 1907; re-en. Sec. 7790, R.C.M. 1921; Cal. Civ. C. Sec. 2000; Field Civ. C. Sec. 1030; re-en. Sec. 7790, R.C.M. 1935; R.C.M. 1947, 41-305.

39-2-505. Repealed. Sec. 10, Ch. 641, L. 1987.

History: En. Sec. 2705, Civ. C. 1895; re-en. Sec. 5276, Rev. C. 1907; re-en. Sec. 7791, R.C.M. 1921; Cal. Civ. C. Sec. 2001; Based on Field Civ. C. Sec. 1031; re-en. Sec. 7791, R.C.M. 1935; R.C.M. 1947, 41-306.

Part 6

Master and Servant

39-2-601. Servant defined. A servant is one who is employed to render personal service to his employer otherwise than in the pursuit of an independent calling and who in such service remains entirely under the control and direction of the latter, who is called his master.

History: En. Sec. 2720, Civ. C. 1895; re-en. Sec. 5279, Rev. C. 1907; re-en. Sec. 7794, R.C.M. 1921; Cal. Civ. C. Sec. 2009; Field Civ. C. Sec. 1034; re-en. Sec. 7794, R.C.M. 1395; R.C.M. 1947, 41-401.

39-2-602. Term of hiring. (1) A servant is presumed to have been hired for such length of time as the parties adopt for the estimation of wages. A hiring at a yearly rate is presumed to be for 1 year; a hiring at a daily rate, for 1 day; a hiring by piecework, for no specified term.

(2) In the absence of any agreement or custom as to the term of service, the time of payment, or rate or value of wages, a servant is presumed to be hired by the month at a monthly rate of reasonable wages, to be paid when the service is performed.

History: (1)En. Sec. 2721, Civ. C. 1895; re-en. Sec. 5280, Rev. C. 1907; re-en. Sec. 7795, R.C.M. 1921; Cal. Civ. C. Sec. 2010; Field Civ. C. Sec. 1035; re-en. Sec. 7795, R.C.M. 1935; Sec. 41-402, R.C.M. 1947; (2)En. Sec. 2722, Civ. C. 1895; re-en. Sec. 5281, Rev. C. 1907; re-en. Sec. 7796, R.C.M. 1921; Cal. Civ. C. Sec. 2011; Based on Field Civ. C. Sec. 1036; re-en. Sec. 7796, R.C.M. 1935; Sec. 41-403, R.C.M. 1947; R.C.M. 1947, 41-402, 41-403.

Cross-References

Contract not enforceable against employee beyond 2 years, 28-2-722.

"Servant" defined, 39-2-601.

39-2-603. Renewal of hiring. Where, after the expiration of an agreement respecting the wages and the term of service, the parties continue the relation of master and servant, they are presumed to have renewed the agreement for the same wages and term of service.

History: En. Sec. 2723, Civ. C. 1895; re-en. Sec. 5282, Rev. C. 1907; re-en. Sec. 7797, R.C.M. 1921; Cal. Civ. C. Sec. 2012; Field Civ. C. Sec. 1037; re-en. Sec. 7797, R.C.M. 1395; R.C.M. 1947, 41-404.

Cross-References
"Servant" defined, 39-2-601.

39-2-604. Time of service. The entire time of a domestic servant belongs to the master, and the time of other servants to such extent as is usual in the business in which they serve, not exceeding in any case 10 hours in the day.

History: En. Sec. 2724, Civ. C. 1895; re-en. Sec. 5283, Rev. C. 1907; re-en. Sec. 7798, R.C.M. 1921; Cal. Civ. C. Sec. 2013; Field Civ. C. Sec. 1038; re-en. Sec. 7798, R.C.M. 1935; R.C.M. 1947, 41-405.

Cross-References
Eight-hour day maximum, Art. XII, sec. 2, Mont. Const.
"Servant" defined, 39-2-601.

39-2-605. Servant to pay over without demand. A servant must deliver to his master without demand, as soon as with reasonable diligence he can find him, everything that he receives for his account, but he is not bound without orders from his master to send anything to him through another person.

History: En. Sec. 2725, Civ. C. 1895; re-en. Sec. 5284, Rev. C. 1907; re-en. Sec. 7799, R.C.M. 1921; Cal. Civ. C. Sec. 2014; Field Civ. C. Sec. 1039; re-en. Sec. 7799, R.C.M. 1935; R.C.M. 1947, 41-406.

Cross-References
"Servant" defined, 39-2-601.

39-2-606. When servant may be discharged. A master may discharge any servant, other than an apprentice, whether engaged for a fixed term or not:

(1) if he is guilty of misconduct in the course of his service or of gross immorality, though unconnected with the same; or

(2) if, being employed about the person of his master or in a confidential position, the master discovers that he has been guilty of misconduct before or after the commencement of his service of such a nature that, if the master had known or contemplated it, he would not have so employed him.

History: En. Sec. 2726, Civ. C. 1895; re-en. Sec. 5285, Rev. C. 1907; re-en. Sec. 7800, R.C.M. 1921; Cal. Civ. C. Sec. 2015; Field Civ. C. Sec. 1040; re-en. Sec. 7800, R.C.M. 1935; R.C.M. 1947, 41-407.

Cross-References
"Servant" defined, 39-2-601.
Apprenticeship, Title 39, ch. 6.

Part 7

General Liability Arising From Employment Relationship

Part Cross-References
Negligence and comparative negligence, 27-1-701, 27-1-702.
General duty of care, 28-1-201.
Indemnity, Title 28, ch. 11, part 3.

39-2-701. Indemnification of employee. (1) An employer must indemnify his employee, except as prescribed in subsection (2) of this section, for all that he necessarily expends or loses in direct consequence of the discharge of his duties as such or of his obedience to the directions of the employer, even though unlawful, unless the employee at the time of obeying such directions believed them to be unlawful.

(2) An employer is not bound to indemnify his employee for losses suffered by the latter in consequence of the ordinary risks of the business in which he is employed.

(3) An employer must in all cases indemnify his employee for losses caused by the former's want of ordinary care.

History: (1)En. Sec. 2660, Civ. C. 1895; re-en. Sec. 5242, Rev. C. 1907; re-en. Sec. 7757, R.C.M. 1921; Cal. Civ. C. Sec. 1969; Field Civ. C. Sec. 1005; re-en. Sec. 7757, R.C.M. 1935; Sec. 41-102, R.C.M. 1947; (2)En. Sec. 2661, Civ. C. 1895; re-en. Sec. 5243, Rev. C. 1907; re-en. Sec. 7758, R.C.M. 1921; Cal. Civ. C. Sec. 1970; Based on Field Civ. C. Sec. 1006; re-en. Sec. 7758, R.C.M. 1935; Sec. 41-103, R.C.M. 1947; (3)En. Sec. 2662, Civ. C. 1895; re-en. Sec. 5244, Rev. C. 1907; re-en. Sec. 7759, R.C.M. 1921; Cal. Civ. C. Sec. 1971; Field Civ. C. Sec. 1007; re-en. Sec. 7759, R.C.M. 1935; Sec. 41-104, R.C.M. 1947; R.C.M. 1947, 41-102, 41-103, 41-104.

39-2-702. Liability of employee for negligence. An employee who is guilty of a culpable degree of negligence is liable to his employer for the damage thereby caused to the latter, and the employer is liable to him for the value of such services only as are properly rendered if the service is not gratuitous.

History: En. Sec. 2685, Civ. C. 1895; re-en. Sec. 5268, Rev. C. 1907; re-en. Sec. 7783, R.C.M. 1921; Cal. Civ. C. Sec. 1990; Field Civ. C. Sec. 1023; re-en. Sec. 7783, R.C.M. 1935; R.C.M. 1947, 41-216.

Cross-References

Liability for negligent and willful acts, 27-1-701.

39-2-703. Liability of railway corporation for negligence of fellow servants. (1) Every person or corporation operating a railway or railroad in this state is liable for all damages sustained by any employee of such person or corporation in consequence of the neglect of any other employee thereof or by the mismanagement of any other employee thereof and in consequence of the willful wrongs, whether of commission or omission, of any other employee thereof when such neglect, mismanagement, or wrongs are in any manner connected with the use and operation of any railway or railroad on or about which he is employed. No contract which restricts such liability is legal or binding.

(2) In case of the death of any such employee in consequence of any injury or damage so sustained, the right of action provided by subsection (1) shall survive and may be prosecuted and maintained by his heirs or personal representatives.

(3) Every railway corporation doing business in this state, including electric railway corporations, is liable for damages sustained by an employee thereof within this state, subject to the provisions of 27-1-702, when such damages are caused by the negligence of any train dispatcher, telegraph operator, superintendent, master mechanic, yardmaster, conductor, engineer, motorman, or any other employee who has superintendence of any stationary or hand signal.

(4) No contract of insurance, relief, benefit, or indemnity in case of injury or death or any other contract entered into, either before or after the injury, between the person injured and any of the employers named in subsection (3)

is a bar or defense to any cause of action brought under the provisions of this section, except as otherwise provided in the Workers' Compensation Act.

History: (1), (2)En. Secs. 1, 2, Ch. 1, L. 1905; re-en. Secs. 5251, 5252, Rev. C. 1907; re-en. Secs. 7766, 7767, R.C.M. 1921; re-en. Secs. 7766, 7767, R.C.M. 1935; Secs. 41-111, 41-112, R.C.M. 1947; (3), (4)En. Secs. 1, 3, Ch. 83, L. 1903; re-en. Secs. 5245, 5247, Rev. C. 1907; re-en. Secs. 7760, 7762, R.C.M. 1921; re-en. Secs. 7760, 7762, R.C.M. 1935; Secs. 41-105, 41-107, R.C.M. 1947; R.C.M 1947, 41-105, 41-107, 41-111, 41-112; amd. Sec. 5, Ch. 397, L. 1979.

Cross-References

Invalidity of contracts that violate law, 28-2-702.

Workers' Compensation Act, Title 39, ch. 71.

Liability for death or injury to railroad employees, 69-14-1006.

39-2-704. Liability of mining company for negligence of fellow servants. (1) Every company, corporation, or individual operating any mine, smelter, or mill for the refining of ores is liable for damages sustained by any employee thereof within this state, subject to the provisions of 27-1-702, when such damage is caused by the negligence of any superintendent, foreman, shift boss, hoisting or other engineer, or craneman.

(2) No contract of insurance, relief, benefit, or indemnity in case of injury or death or any other contract entered into before the injury between the person injured and any of the employers named in this section is a bar or defense to any cause of action brought under the provisions of this section, except as otherwise provided in the Workers' Compensation Act.

(3) In case of the death of any such employee in consequence of any injury or damages so sustained, the right of action survives and may be prosecuted and maintained by his heirs or personal representatives.

History: En. Secs. 1, 2, 3, Ch. 23, L. 1905; re-en. Secs. 5248, 5249, 5250, Rev. C. 1907; re-en. Secs. 7763, 7764, 7765, R.C.M. 1921; re-en. Secs. 7763, 7764, 7765, R.C.M. 1935; R.C.M. 1947, 41-108, 41-109, 41-110; amd. Sec. 6, Ch. 397, L. 1979.

39-2-705. Contract discharging employer liability for negligence void. Any contract or agreement entered into by any person, company, or corporation with its servants or employees whereby such person, company, or corporation shall be released or discharged from liability or responsibility on account of personal injuries received by such servants or employees while in the service of such person, company, or corporation, by reason of the negligence of such person, company, or corporation, or the agents or employees thereof, shall be absolutely null and void.

History: En. Sec. 2242, Civ. C. 1895; re-en. Sec. 5053, Rev. C. 1907; re-en. Sec. 7555, R.C.M. 1921; re-en. Sec. 7555, R.C.M. 1935; R.C.M. 1947, 13-803.

Cross-References

Contracts against the policy of the law, 28-2-702.

Part 8

Blacklisting and Protection of Discharged Employees

39-2-801. Employee to be furnished on demand with reason for discharge. It is the duty of any person after having discharged any employee from his service, upon demand by such discharged employee, to furnish him in writing a full, succinct, and complete statement of the reason of his discharge and if such person refuses so to do within a reasonable time after such demand, it is unlawful thereafter for such person to furnish any statement of the reason of such discharge to any person or in any way to blacklist or to prevent such discharged person from procuring employment elsewhere, subject to the penalties and damages prescribed in this part.

History: **En. Sec. 3, p. 258, L. 1891; amd. Sec. 3392, Pol. C. 1895; re-en. Sec. 1757, Rev. C. 1907; re-en. Sec. 3094, R.C.M. 1921; re-en. Sec. 3094, R.C.M. 1935; R.C.M. 1947, 41-1311.**

Cross-References
"Employment" defined, 39-2-101.

39-2-802. Protection of discharged employees. If any person, after having discharged an employee from his service, prevents or attempts to prevent by word or writing of any kind such discharged employee from obtaining employment with any other person, such person is punishable as provided in 39-2-804 and is liable in punitive damages to such discharged person, to be recovered by civil action. No person is prohibited from informing by word or writing any person to whom such discharged person or employee has applied for employment a truthful statement of the reason for such discharge.

History: **En. Sec. 1, p. 257, L. 1891; amd. Sec. 3390, Pol. C. 1895; re-en. Sec. 1755, Rev. C. 1907; re-en. Sec. 3092, R.C.M. 1921; re-en. Sec. 3092, R.C.M. 1935; R.C.M. 1947, 41-1309.**

Cross-References
"Employment" defined, 39-2-101.

39-2-803. Blacklisting prohibited. If any company or corporation in this state authorizes or allows any of its agents to blacklist or any person does blacklist any discharged employee or attempts by word or writing or any other means whatever to prevent any discharged employee or any employee who may have voluntarily left the company's service from obtaining employment with another person, except as provided for in 39-2-802, such company or corporation or person is liable in punitive damages to such employee so prevented from obtaining employment, to be recovered by him in a civil action, and is also punishable as provided in 39-2-804.

History: **En. Sec. 2, p. 258, L. 1891; amd. Sec. 3391, Pol. C. 1895; re-en. Sec. 1756, Rev. C. 1907; re-en. Sec. 3093, R.C.M. 1921; re-en. Sec. 3093, R.C.M. 1935; R.C.M. 1947, 41-1310; amd. Sec. 7, Ch. 397, L. 1979.**

Cross-References
Punitive damages, 27-1-220, 27-1-221.
"Employment" defined, 39-2-101.

39-2-804. Violation of part a misdemeanor. Every person who violates any of the provisions of this part relating to the protection of discharged employees and the prevention of blacklisting is guilty of a misdemeanor.

History: **En. Sec. 656, Pen. C. 1895; re-en. Sec. 8467, Rev. C. 1907; re-en. Sec. 11219, R.C.M. 1921; re-en. Sec. 11219, R.C.M. 1935; Sec. 94-3555, R.C.M. 1947; redes. 41-1325 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 41-1325.**

Cross-References
Classification of offenses, 45-1-201.
"Misdemeanor" defined, 45-2-101.
Penalty for misdemeanor, 46-18-212.

Part 9

Wrongful Discharge From Employment

39-2-901. Short title. This part may be cited as the "Wrongful Discharge From Employment Act".

History: **En. Sec. 1, Ch. 641, L. 1987.**

39-2-902. Purpose. This part sets forth certain rights and remedies with respect to wrongful discharge. Except as limited in this part, employment having no specified term may be terminated at the will of either the employer or the employee on notice to the other for any reason considered sufficient by the terminating party. Except as provided in 39-2-912, this part provides the exclusive remedy for a wrongful discharge from employment.

History: En. Sec. 2, Ch. 641, L. 1987.

39-2-903. Definitions. In this part, the following definitions apply:

(1) "Constructive discharge" means the voluntary termination of employment by an employee because of a situation created by an act or omission of the employer which an objective, reasonable person would find so intolerable that voluntary termination is the only reasonable alternative. Constructive discharge does not mean voluntary termination because of an employer's refusal to promote the employee or improve wages, responsibilities, or other terms and conditions of employment.

(2) "Discharge" includes a constructive discharge as defined in subsection (1) and any other termination of employment, including resignation, elimination of the job, layoff for lack of work, failure to recall or rehire, and any other cutback in the number of employees for a legitimate business reason.

(3) "Employee" means a person who works for another for hire. The term does not include a person who is an independent contractor.

(4) "Fringe benefits" means the value of any employer-paid vacation leave, sick leave, medical insurance plan, disability insurance plan, life insurance plan, and pension benefit plan in force on the date of the termination.

(5) "Good cause" means reasonable job-related grounds for dismissal based on a failure to satisfactorily perform job duties, disruption of the employer's operation, or other legitimate business reason.

(6) "Lost wages" means the gross amount of wages that would have been reported to the internal revenue service as gross income on Form W-2 and includes additional compensation deferred at the option of the employee.

(7) "Public policy" means a policy in effect at the time of the discharge concerning the public health, safety, or welfare established by constitutional provision, statute, or administrative rule.

History: En. Sec. 3, Ch. 641, L. 1987.

39-2-904. Elements of wrongful discharge. A discharge is wrongful only if:

(1) it was in retaliation for the employee's refusal to violate public policy or for reporting a violation of public policy;

(2) the discharge was not for good cause and the employee had completed the employer's probationary period of employment; or

(3) the employer violated the express provisions of its own written personnel policy.

History: En. Sec. 4, Ch. 641, L. 1987.

39-2-905. Remedies. (1) If an employer has committed a wrongful discharge, the employee may be awarded lost wages and fringe benefits for a period not to exceed 4 years from the date of discharge, together with interest thereon. Interim earnings, including amounts the employee could have earned with reasonable diligence, must be deducted from the amount awarded for lost wages.

(2) The employee may recover punitive damages otherwise allowed by law if it is established by clear and convincing evidence that the employer engaged in actual fraud or actual malice in the discharge of the employee in violation of 39-2-904(1).

(3) There is no right under any legal theory to damages for wrongful discharge under this part for pain and suffering, emotional distress, compensatory damages, punitive damages, or any other form of damages, except as provided for in subsections (1) and (2).

History: En. Sec. 5, Ch. 641, L. 1987.

39-2-906 through 39-2-910 reserved.

39-2-911. Limitation of actions. (1) An action under this part must be filed within 1 year after the date of discharge.

(2) If an employer maintains written internal procedures, other than those specified in 39-2-912, under which an employee may appeal a discharge within the organizational structure of the employer, the employee shall first exhaust those procedures prior to filing an action under this part. The employee's failure to initiate or exhaust available internal procedures is a defense to an action brought under this part. If the employer's internal procedures are not completed within 90 days from the date the employee initiates the internal procedures, the employee may file an action under this part and for purposes of this subsection the employer's internal procedures are considered exhausted. The limitation period in subsection (1) is tolled until the procedures are exhausted. In no case may the provisions of the employer's internal procedures extend the limitation period in subsection (1) more than 120 days.

(3) If the employer maintains written internal procedures under which an employee may appeal a discharge within the organizational structure of the employer, the employer shall within 7 days of the date of the discharge notify the discharged employee of the existence of such procedures and shall supply the discharged employee with a copy of them. If the employer fails to comply with this subsection, the discharged employee need not comply with subsection (2).

History: En. Sec. 6, Ch. 641, L. 1987.

39-2-912. Exemptions. This part does not apply to a discharge:

(1) that is subject to any other state or federal statute that provides a procedure or remedy for contesting the dispute. Such statutes include those that prohibit discharge for filing complaints, charges, or claims with administrative bodies or that prohibit unlawful discrimination based on race, national origin, sex, age, handicap, creed, religion, political belief, color, marital status, and other similar grounds.

(2) of an employee covered by a written collective bargaining agreement or a written contract of employment for a specific term.

History: En. Sec. 7, Ch. 641, L. 1987.

39-2-913. Preemption of common-law remedies. Except as provided in this part, no claim for discharge may arise from tort or express or implied contract.

History: En. Sec. 8, Ch. 641, L. 1987.

39-2-914. Arbitration. (1) Under a written agreement of the parties, a dispute that otherwise could be adjudicated under this part may be resolved by final and binding arbitration as provided in this section.

(2) An offer to arbitrate must be in writing and contain the following provisions:

(a) A neutral arbitrator must be selected by mutual agreement or, in the absence of agreement, as provided in 27-5-211.

(b) The arbitration must be governed by the Uniform Arbitration Act, Title 27, chapter 5. If there is a conflict between the Uniform Arbitration Act and this part, this part applies.

(c) The arbitrator is bound by this part.

(3) If a complaint is filed under this part, the offer to arbitrate must be made within 60 days after service of the complaint and must be accepted in writing within 30 days after the date the offer is made.

(4) A party who makes a valid offer to arbitrate that is not accepted by the other party and who prevails in an action under this part is entitled as an element of costs to reasonable attorney fees incurred subsequent to the date of the offer.

(5) A discharged employee who makes a valid offer to arbitrate that is accepted by the employer and who prevails in such arbitration is entitled to have the arbitrator's fee and all costs of arbitration paid by the employer.

(6) If a valid offer to arbitrate is made and accepted, arbitration is the exclusive remedy for the wrongful discharge dispute and there is no right to bring or continue a lawsuit under this part. The arbitrator's award is final and binding, subject to review of the arbitrator's decision under the provisions of the Uniform Arbitration Act.

History: En. Sec. 9, Ch. 641, L. 1987.

CHAPTER 3

WAGES AND WAGE PROTECTION

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39-3-101. Employer to furnish itemized statement of deductions.
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Part 1

General Provisions

39-3-101. Employer to furnish itemized statement of deductions. (1) All employers in this state when making payment to employees for salaries or wages shall, upon making such payment, give to the employee an itemized statement setting forth moneys deducted because of state and federal income taxes, social security, or any other deductions together with the amount of each deduction.

(2) Where no deduction is made in such payment of wages or salaries, the employer shall give to the employee a statement that the payment does not include any such deductions.

History: **En. Sec. 1, Ch. 159, L. 1957; R.C.M. 1947, 41-117.**

Cross-References

Child support income deductions and withholding, Title 40, ch. 5, parts 3 and 4.

39-3-102. Compensation of employee dismissed for cause. An employee dismissed by his employer for good cause is not entitled to any compensation for services rendered since the last day upon which a payment became due to him under the contract.

History: **En. Sec. 2706, Civ. C. 1895; re-en. Sec. 5277, Rev. C. 1907; re-en. Sec. 7792, R.C.M. 1921; Cal. Civ. C. Sec. 2002; Field Civ. C. Sec. 1032; re-en. Sec. 7792, R.C.M. 1935; R.C.M. 1947, 41-307.**

Cross-References

Dismissal by employer, 39-2-503.

39-3-103. Compensation of employee leaving for cause. An employee who quits the service of his employer for good cause is entitled to such proportion of the compensation which would become due in case of full performance as the services which he has already rendered bear to the services which he was to render as full performance.

History: **En. Sec. 2707, Civ. C. 1895; re-en. Sec. 5278, Rev. C. 1907; re-en. Sec. 7793, R.C.M. 1921; Cal. Civ. C. Sec. 2003; Field Civ. C. Sec. 1033; re-en. Sec. 7793, R.C.M. 1935; R.C.M. 1947, 41-308.**

Cross-References

Termination by employee, 39-2-503.

39-3-104. Equal pay for women for equivalent service. (1) It is unlawful for the state or any county, municipal entity, school district, public or private corporation, person, or firm to employ women in any occupation within the state for compensation less than that paid to men for equivalent service or for the same amount or class of work or labor in the same industry, school, establishment, office, or place of employment of any kind or description.

(2) If the state or any county, municipal entity, school district, public or private corporation, person, or firm violates any of the provisions of subsection (1), it is guilty of a misdemeanor and upon conviction thereof shall be fined not less than $25 or more than $500 for each offense.

History: En. Secs. 1, 2, Ch. 147, L. 1919; re-en. Secs. 3090, 3091, R.C.M. 1921; re-en. Secs. 3090, 3091, R.C.M. 1935; R.C.M. 1947, 41-1307, 41-1308; amd. Sec. 8, Ch. 397, L. 1979.

Cross-References

Individual dignity, Art. II, sec. 4, Mont. Const.

Equal pay for comparable worth jobs, 2-18-208, 2-18-209.

Women in employment, Title 39, ch. 7.

Illegal discrimination, Title 49, ch. 2.

Part 2

Payment of Wages

39-3-201. Definitions. The following are the definitions used for the purpose of this part:

(1) "Board" means the board of personnel appeals provided for in 2-15-1705.

(2) "Commissioner of labor" refers to the director, commissioner, or chief of the department of labor and industry as the department is defined by law, or any person or persons designated by him for the purpose of this part.

(3) "Department" means the department of labor and industry as provided for in 2-15-1701.

(4) "Employ" means permit or suffer to work.

(5) "Employee" includes any person who works for another for hire.

(6) "Employer" includes any individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons acting directly or indirectly in the interest of an employer in relation to an employee but shall not include the United States.

(7) "Wages" includes any money due an employee from the employer or employers, whether to be paid by the hour, day, week, semimonthly, monthly, or yearly and shall include bonus, piecework, tips, and gratuities of any kind.

History: En. Sec. 1, Ch. 11, L. 1919; re-en. Sec. 3084, R.C.M. 1921; re-en. Sec. 3084, R.C.M. 1935; amd. Sec. 1, Ch. 169, L. 1941; amd. Sec. 1, Ch. 64, L. 1975; R.C.M. 1947, 41-1301(3); amd. Sec. 1, Ch. 554, L. 1989.

Compiler's Comments

1989 Amendment: Inserted definitions of Board and Department; and made minor changes in phraseology. Amendment effective July 1, 1989.

Applicability: Section 9, Ch. 554, L. 1989, provided: "[This act] applies to all wage claims filed with the department after July 1, 1989."

39-3-202. Rulemaking power of commissioner. The commissioner is authorized to issue, amend, and enforce rules for the purpose of carrying out the provisions of this part.

History: En. Sec. 4, Ch. 40, L. 1967; R.C.M. 1947, 41-1314.2(part); amd. Sec. 9, Ch. 397, L. 1979.

Cross-References
Adoption and publication of rules, Title 2, ch. 4, part 3.
"Commissioner of Labor" defined, 39-3-201.

39-3-203. Employer to notify employee on written demand as to rate of wages and date of paydays. (1) Each employer or an authorized representative of the employer shall, on written demand, prior to the commencing of work, notify each employee as to the rate of wages to be paid, whether by the hour, day, week, month, or year, and date of paydays. Such notification must be in writing to each employee or by posting of notice in a conspicuous place.

(2) The provisions of this section do not apply to an employer who has entered into a signed collective bargaining agreement, when such agreement contains conditions of employment, wages to be received, and hours to be worked, or to employers engaged in agriculture or stockraising; provided, however, such employers shall comply with the provisions of 39-3-205.

History: En. Sec. 1, Ch. 11, L. 1919; re-en. Sec. 3084, R.C.M. 1921; re-en. Sec. 3084, R.C.M. 1935; amd. Sec. 1, Ch. 169, L. 1941; amd. Sec. 1, Ch. 64, L. 1975; R.C.M. 1947, 41-1301(1); amd. Sec. 10, Ch. 397, L. 1979.

Cross-References
"Employee" defined, 39-3-201.
"Employer" defined, 39-3-201.
"Wages" defined, 39-3-201.

39-3-204. Payment of wages generally. (1) Every employer of labor in the state of Montana shall pay to each employee the wages earned by such employee in lawful money of the United States or checks on banks convertible into cash on demand at the full face value thereof, and no person for whom labor has been performed may withhold from any employee any wages earned or unpaid for a longer period than 10 business days after the same are due and payable. However, reasonable deductions may be made for board, room, and other incidentals supplied by the employer, whenever such deductions are a part of the conditions of employment, or other deductions provided for by law.

(2) If at such time of payment of wages any employee is absent from the regular place of labor, he is entitled to such payment at any time thereafter.

(3) Provisions of this section do not apply to any professional, supervisory, or technical employee who by custom receives his wages earned at least once monthly.

History: En. Sec. 1, Ch. 11, L. 1919; re-en. Sec. 3084, R.C.M. 1921; re-en. Sec. 3084, R.C.M 1935; amd. Sec. 1, Ch. 169, L. 1941; amd. Sec. 1, Ch. 64, L. 1975; R.C.M. 1947, 41-1301(2); amd. Sec. 11, Ch. 397, L. 1979.

Cross-References
"Employee" defined, 39-3-201.
"Employer" defined, 39-3-201.
"Wages" defined, 39-3-201.
Wages of minors, 40-6-236.

39-3-205. Payment of wages when employee separated from employment prior to payday — exception. (1) Except as provided in subsections (2) and (3), when an employee is separated from the employ of any employer, all the unpaid wages of the employee are due and payable within 3 days, except for employees of the state of Montana and its political subdivisions who would be paid on the next regular payday for the pay period during which the employee was separated from employment or 15 days from the date of separation from employment, whichever occurs first, either through the regular pay channels or by mail if requested by the employee. However, if an employer's payroll checks originate at an office outside the state, the time provided in this section for payment of wages must be extended for 3 additional days.

(2) Except as provided in subsection (3), if an employee is separated for cause from employment by the employer, all the unpaid wages of the employee are due and payable immediately upon the separation.

(3) If an employee is separated from employment by the employer because the employee has committed the offense of theft of the employer's funds or property and criminal charges have been filed by the county attorney against the employee, the employer may apply to the district court for an order temporarily staying the payment of any unpaid wages due the employee and staying the running of the penalty provided for in 39-3-206 pending the final resolution of criminal proceedings against the employee. If the employee pleads or is found guilty of the criminal offense, the district court may order any wages due and owing to the employee by the employer to be offset against the amount the employee illegally obtained from the employer. If the employee is found not guilty of the criminal offense, the district court may order the employer to pay the employee any wages due, including interest.

History: En. Sec. 3, Ch. 11, L. 1919; amd. Sec. 1, Ch. 66, L. 1921; re-en. Sec. 3086, R.C.M. 1921; re-en. Sec. 3086, R.C.M. 1935; amd. Sec. 3, Ch. 169, L. 1941; amd. Sec. 2, Ch. 40, L. 1967; R.C.M. 1947, 41-1303; amd. Sec. 1, Ch. 492, L. 1979; amd. Sec. 1, Ch. 583, L. 1989.

Compiler's Comments

1989 Amendment: In (1) substituted reference to subsections (2) and (3) for reference to subsection (2); in (2) inserted exception clause; inserted (3) relating to a stay of the payment of final wages due an employee who has committed theft of his employer's property; and made minor changes in phraseology.

Cross-References

"Employ" defined, 39-3-201.
"Employee" defined, 39-3-201.
"Employer" defined, 39-3-201.
"Wages" defined, 39-3-201.

39-3-206. Penalty for failure to pay wages at times specified in law. Any employer, as such employer is defined in this part, who fails to pay any of his employees as provided in this part or violates any other provision of this part shall be guilty of a misdemeanor. A penalty shall also be assessed against and paid by such employer and become due such employee as follows: a sum equivalent to the fixed amount of 5% of the wages due and unpaid shall be assessed for each day, except Sundays and legal holidays, upon which such failure continues after the day upon which such wages were due, except that such failure shall not be deemed to continue more than 20 days after the date such wages were due.

History: En. Sec. 2, Ch. 11, L. 1919; re-en. Sec. 3085, R.C.M. 1921; re-en. Sec. 3085, R.C.M. 1935; amd. Sec. 2, Ch. 169, L. 1941; amd. Sec. 1, Ch. 40, L. 1967; R.C.M. 1947, 41-1302(part).

Cross-References

"Employee" defined, 39-3-201.
"Employer" defined, 39-3-201.
"Wages" defined, 39-3-201.

39-3-207. Period within which employee may recover penalties. Any employee may recover all such penalties as are provided for the violation of 39-3-206 which have accrued to him at any time within 18 months succeeding such default or delay in the payment of such wages.

History: En. Sec. 4, Ch. 11, L. 1919; re-en. Sec. 3087, R.C.M. 1921; re-en. Sec. 3087, R.C.M. 1935; amd. Sec. 1, Ch. 234, L. 1973; R.C.M. 1947, 41-1304.

Cross-References
"Employee" defined, 39-3-201.
"Wages" defined, 39-3-201.

39-3-208. Contracts in violation of part void. Any contract or agreement made between any person, partnership, or corporation and any party in his or its employ the provisions of which violate, evade, or circumvent this part is unlawful and void, but such employee may sue to recover his wages earned, together with the 5% penalty specified in 39-3-206 or separately to recover the penalty if the wages have been paid.

History: En. Sec. 5, Ch. 11, L. 1919; re-en. Sec. 3088, R.C.M. 1921; re-en. Sec. 3088, R.C.M. 1935; R.C.M. 1947, 41-1305; amd. Sec. 12, Ch. 397, L. 1979.

Cross-References
Invalidity of contracts to violate law, 28-2-702.
"Employ" defined, 39-3-201.
"Employee" defined, 39-3-201.
"Wages" defined, 39-3-201.

39-3-209. Commissioner of labor to investigate violations and institute actions for unpaid wages. It shall be the duty of the commissioner of labor to inquire diligently for any violations of this part and to institute actions for the collection of unpaid wages and for the penalties provided for herein in such cases as he may deem proper and to enforce generally the provisions of this part.

History: En. Sec. 2, Ch. 11, L. 1919; re-en. Sec. 3085, R.C.M. 1921; re-en. Sec. 3085, R.C.M. 1935; amd. Sec. 2, Ch. 169, L. 1941; amd. Sec. 1, Ch. 40, L. 1967; R.C.M. 1947, 41-1302(part).

Cross-References
"Commissioner of Labor" defined, 39-3-201.
"Wages" defined, 39-3-201.

39-3-210. Investigative powers of commissioner. (1) The commissioner or his authorized representatives are empowered to enter and inspect such places, question such employees, and investigate such facts, conditions, or matters which they may consider appropriate to determine whether any person has violated any provision of this part or any rule issued hereunder or which may aid in the enforcement of the provisions of this part.

(2) The commissioner or his authorized representatives may administer oaths and examine witnesses under oath; issue subpoenas; compel the attendance of witnesses and the production of papers, books, accounts, records, payrolls, documents, and testimony; and take depositions and affidavits in any proceeding before the commissioner.

History: En. Sec. 3, Ch. 40, L. 1967; R.C.M. 1947, 41-1314.1; amd. Sec. 13, Ch. 397, L. 1979.

Cross-References
"Employee" defined, 39-3-201.

39-3-211. Commissioner to take wage assignments. Whenever the commissioner determines that one or more employees have claims for unpaid wages, he shall, upon the written request of the employee, take an assignment of the claim in trust for such employee and may maintain any proceeding appropriate to enforce the claim, including liquidated damages pursuant to this part. With the written consent of the assignor, the commissioner may settle or adjust any claim assigned pursuant to this section.

History: En. Sec. 4, Ch. 40, L. 1967; R.C.M. 1947, 41-1314.2(part); amd. Sec. 14, Ch. 397, L. 1979.

Cross-References
Wagebrokers, Title 31, ch. 1, part 3.
"Employee" defined, 39-3-201.
"Wages" defined, 39-3-201.

39-3-212. Court enforcement of administrative decision. A decision of the hearings officer, if the decision is not appealed to the board, or a decision of the board, if judicial review is not sought, may be enforced by application by the commissioner to a district court for an order or judgment enforcing the decision. The commissioner shall apply to the district court where the employer has its principal place of business or in the first judicial district of the state. A proceeding under this section is not a review of the validity of the administrative decision.

History: En. 41-1314.4 by Sec. 1, Ch. 197, L. 1974; R.C.M. 1947, 41-1314.4; amd. Sec. 4, Ch. 554, L. 1989.

Compiler's Comments

1989 Amendment: Substituted first sentence relating to enforcement by application for a court order for former language that read: "A determination by the commissioner of labor and industry made after a hearing as provided for in parts 2 and 4 of this chapter may be enforced by application by the commissioner to a district court for an order or judgment enforcing the determination if the time provided to initiate judicial review by the employer has passed"; and at end substituted "administrative decision" for "commissioner's determination". Amendment effective July 1, 1989.

Applicability: Section 9, Ch. 554, L. 1989, provided: "[This act] applies to all wage claims filed with the department after July 1, 1989."

Cross-References

"Commissioner of Labor" defined, 39-3-201.

"Employer" defined, 39-3-201.

39-3-213. Disposition of wages. (1) The commissioner of labor and industry shall deposit wages collected by him under parts 2 and 4 of this chapter into the agency fund and shall attempt to make payment of wages to the entitled person. Wages deposited into the agency fund are not interest bearing. The payment of wages collected may be made by means of state warrants.

(2) Warrants issued pursuant to subsection (1) which remain unclaimed for more than 1 year from the date of issuance shall be returned to the state auditor for cancellation in accordance with 17-8-303.

History: En. 41-1314.3 by Sec. 1, Ch. 164, L. 1974; R.C.M. 1947, 41-1314.3; amd. Sec. 1, Ch. 53, L. 1979.

Cross-References

"Commissioner of Labor" defined, 39-3-201.

"Wages" defined, 39-3-201.

39-3-214. Court costs and attorneys' fees. (1) Whenever it is necessary for the employee to enter or maintain a suit at law for the recovery or collection of wages due as provided for by this part, a resulting judgment must include a reasonable attorney's fee in favor of the successful party, to be taxed as part of the costs in the case.

(2) Any judgment for the plaintiff in a proceeding pursuant to this part must include all costs reasonably incurred in connection with the proceeding, including attorneys' fees.

(3) If the proceeding is maintained by the commissioner, no court costs or fees are required of him nor is he required to furnish any bond or other security that might otherwise be required in connection with any phase of the proceeding.

History: (1)En. Sec. 6, Ch. 11, L. 1919; re-en. Sec. 3089, R.C.M. 1921; re-en. Sec. 3089, R.C.M. 1935; Sec. 41-1306, R.C.M. 1947; (2), (3)En. Sec. 4, Ch. 40, L. 1967; Sec. 41-1314.2, R.C.M. 1947; R.C.M. 1947, 41-1306, 41-1314.2(part); amd. Sec. 15, Ch. 397, L. 1979.

Cross-References

Governmental entity not required to prepay fees, 25-10-405.

Payment of costs by governmental entities, Title 25, ch. 10, part 7.

"Employee" defined, 39-3-201.

"Wages" defined, 39-3-201.

39-3-215. Authority of county attorney. Nothing herein contained shall be construed to limit the authority of the county attorney of any county of the state to prosecute actions, both civil and criminal, for such violations of this part as may come to his knowledge or to enforce the provisions hereof independently and without specific direction of the commissioner of labor.

History: En. Sec. 2, Ch. 11, L. 1919; re-en. Sec. 3085, R.C.M. 1921; re-en. Sec. 3085, R.C.M. 1935; amd. Sec. 2, Ch. 169, L. 1941; amd. Sec. 1, Ch. 40, L. 1967; R.C.M. 1947, 41-1302(part).

Cross-References

County Attorney — duties generally, Title 7, ch. 4, part 27.

"Commissioner of Labor" defined, 39-3-201.

39-3-216. Hearing. (1) When the department determines that a wage claim exists and if it fails to settle the claim with the parties, it shall cause the matter to be brought to a hearing before a department hearings officer. The hearing must be conducted according to contested case procedures under Title 2, chapter 4, part 6, except that the hearings officer is not bound by statutory or common-law rules of evidence.

(2) The decision of the hearings officer is final unless further review is initiated pursuant to 39-3-217 within 15 days after the decision is mailed to each party's last-known address. The period may be extended by the board for good cause.

History: En. Sec. 2, Ch. 554, L. 1989.

Compiler's Comments

Effective Date: Section 8, Ch. 554, L. 1989, provided that this section is effective July 1, 1989.

Applicability: Section 9, Ch. 554, L. 1989, provided: "[This act] applies to all wage claims filed with the department after July 1, 1989."

39-3-217. Appeal to board. If a party is aggrieved by the decision of the hearings officer, he may appeal the decision to the board. The hearing before the board is for review only, and the submission of new or cumulative evidence is not allowed unless the board finds that good cause is shown for the failure to produce the evidence before the hearings officer. When a decision is rendered by the board, the board shall mail copies of the decision to each interested party at his last-known address, and to the department. The decision is final unless an aggrieved party requests a rehearing or initiates judicial review, pursuant to Title 2, chapter 4, part 7, by filing a petition in district court within 30 days of the date of mailing of the board's decision.

History: En. Sec. 3, Ch. 554, L. 1989.

Compiler's Comments

Effective Date: Section 8, Ch. 554, L. 1989, provided that this section is effective July 1, 1989.

Applicability: Section 9, Ch. 554, L. 1989, provided: "[This act] applies to all wage claims filed with the department after July 1, 1989."

Part 3

Reciprocal Agreement for Collection of Wages Act

39-3-301. Short title. This part may be cited as "The Reciprocal Agreement for Collection of Wages Act of 1977".

History: En. 41-1326 by Sec. 1, Ch. 216, L. 1977; R.C.M. 1947, 41-1326.

39-3-302. Purpose. The purpose of this part is to provide for a method of reciprocal enforcement in other states of Montana's wage payment laws contained in part 2 of this chapter and to provide for reciprocal enforcement in Montana of similar wage payment laws of other states.

History: **En. 41-1327 by Sec. 2, Ch. 216, L. 1977; R.C.M. 1947, 41-1327.**

39-3-303. Reciprocal agreements for collection of wages. The department of labor and industry may enter into reciprocal agreements with the labor department or corresponding agency of another state or with the person, board, officer, or commission authorized to act for and on behalf of the department or agency for the collection in the other state of claims or judgments for wages and other demands based upon claims previously assigned to the department of labor and industry.

History: **En. 41-1328 by Sec. 3, Ch. 216, L. 1977; R.C.M. 1947, 41-1328.**

39-3-304. Actions in other states for collections of claims — assignments for collection. The department of labor and industry may, to the extent provided by a reciprocal agreement entered into pursuant to 39-3-303 or by the laws of another state, maintain actions in the courts of another state for the collection of claims for wages, judgments, and other demands and may assign the claims, judgments, and demands to the labor department or agency of another state for collection to the extent permitted or provided for by the laws of the other state or by reciprocal agreement.

History: **En. 41-1329 by Sec. 4, Ch. 216, L. 1977; R.C.M. 1947, 41-1329.**

39-3-305. Claims assigned by other states — actions — collection. The department of labor and industry may, upon the written request of the labor department or other corresponding agency of another state or a person, board, officer, or commission of the other state authorized to act for and on behalf of the labor department or corresponding agency, maintain actions in the courts of this state upon assigned claims for wages, judgments, and demands arising in the other state in the same manner and to the same extent that these actions by the department of labor and industry are authorized when arising in this state. However, these actions may be commenced and maintained only in those cases where the other state, by appropriate legislation or by reciprocal agreement, extends a like comity to similar cases arising in this state.

History: **En. 41-1330 by Sec. 5, Ch. 216, L. 1977; R.C.M. 1947, 41-1330.**

39-3-306. Limitations. Limitations regarding the amount of wages covered by a reciprocal agreement or the time during which the wages are accrued shall be the limitations imposed by the laws of the state originating the action.

History: **En. 41-1331 by Sec. 6, Ch. 216, L. 1977; R.C.M. 1947, 41-1331.**

Part 4

Minimum Wage and Overtime Compensation

39-3-401. Declaration of policy. It is declared to be the policy of this part to:

(1) establish minimum wage and overtime compensation standards for workers at levels consistent with their health, efficiency, and general well-being;

(2) safeguard existing minimum wage and overtime compensation standards which are adequate to maintain the health, efficiency, and general well-being of workers against the unfair competition of wage and hour standards which do not provide such adequate standards of living; and

(3) sustain purchasing power and increase employment opportunities.

History: **En. Sec. 1, Ch. 417, L. 1971; R.C.M. 1947, 41-2301.**

39-3-402. Definitions. As used in this part the following definitions apply:

(1) "Commissioner" means the commissioner of labor and industry.

(2) "Employ" means to suffer or permit to work.

(3) "Employee" includes any individual employed by an employer.

(4) "Farm or ranch" shall mean any endeavor primarily engaged in cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, and poultry and fur-bearing animals and wildlife.

(5) "Farm worker" means any person employed to do any service performed on a farm or ranch.

(6) "Occupation" means any occupation, service, trade, business, industry, or branch or group of industries or employment or class of employment in which employees are gainfully employed.

(7) "Wage" means compensation due to an employee by reason of his employment, payable in legal tender of the United States or check on banks convertible into cash on demand at full face value, subject to such allowance as may be permitted by regulations of the commissioner under 39-3-403. The term "wage" includes the reasonable cost to the employer of furnishing such employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by such employer to his employees; provided, however, that in no case shall such inclusion exceed an amount equal to 40% of the total wage paid by such employer to such employee. The term "wage" does not include the value of any tips received by an employee as a gratuity for service.

History: **En. Sec. 2, Ch. 417, L. 1971; R.C.M. 1947, 41-2302; amd. Sec. 1, Ch. 446, L. 1987.**

39-3-403. Regulations. The commissioner shall make and revise administrative regulations to carry out the purposes of this part. Such regulations shall take effect upon publication by the commissioner. Any person who is aggrieved by an administrative regulation may obtain a hearing before the commissioner upon filing written protest with the commissioner, who shall thereupon set such matter for hearing in the county of residence of such protestant within 30 days after receipt of such protest. After such hearing, the commissioner shall promulgate such further administrative regulations as the evidence produced at said hearing shall justify.

History: **En. Sec. 5, Ch. 417, L. 1971; R.C.M. 1947, 41-2305.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

"Commissioner" defined, 39-3-402.

39-3-404. *(Temporary)* **Minimum wage.** (1) Except as otherwise provided in this part and except for farm workers as provided in subsection (2), every employer shall pay to each of his employees:

(a) at least $3.05 an hour after September 30, 1985, and before October 1, 1986;

(b) at least $3.35 an hour on October 1, 1986, and thereafter.

(2) In the case of a farm worker employed for a part of a calendar year which includes periods requiring working hours in excess of 8 hours per day and other seasonal periods requiring working hours substantially less than 8 hours per day, the employer may pay the worker at a fixed rate of compensation during the term of employment. The employer may elect to:

(a) keep a record of the total number of hours worked by the worker during the part of the year during which the worker was employed by him (the total wages paid by such employer to such employee for that part of the year during which said employee was employed by him shall not be less than the applicable minimum wage rate multiplied by the total number of hours so worked); or

(b) in lieu of the minimum wage set forth herein, pay the farm worker a wage as herein defined on a monthly basis. This monthly compensation shall constitute a minimum wage and shall not be less than the following rates:

(i) $575 a month for the first year from July 1, 1981;

(ii) $635 a month for the second year from July 1, 1981, and thereafter.

39-3-404. *(Effective January 1, 1990)* **Minimum wage.** (1) Except as otherwise provided in this part and except for farm workers as provided in subsection (2), every employer shall pay to each of his employees a wage of not less than the applicable minimum wage as determined by the commissioner in accordance with 39-3-409.

(2) In the case of a farm worker employed for a part of a calendar year which includes periods requiring working hours in excess of 8 hours per day and other seasonal periods requiring working hours substantially less than 8 hours per day, the employer may pay the worker at a fixed rate of compensation during the term of employment. The employer may elect to:

(a) keep a record of the total number of hours worked by the worker during the part of the year during which the worker was employed by him (the total wages paid by such employer to such employee for that part of the year during which said employee was employed by him shall not be less than the applicable minimum wage rate multiplied by the total number of hours so worked); or

(b) in lieu of the minimum wage set forth herein, pay the farm worker a wage as herein defined on a monthly basis. This monthly compensation shall constitute a minimum wage and shall not be less than $635 a month beginning January 1, 1990.

History: **En. Sec. 3, Ch. 417, L. 1971; amd. Sec. 1, Ch. 363, L. 1973; amd. Sec. 1, Ch. 421, L. 1975; R.C.M. 1947, 41-2303(a), (c); amd. Sec. 1, Ch. 410, L. 1981; amd. Sec. 1, Ch. 360, L. 1985; amd. Sec. 1, Ch. 674, L. 1989.**

Compiler's Comments

1989 Amendment: At end of (1) substituted reference to minimum wage determined by the Commissioner for "(a) at least $3.05 an hour after September 30, 1985, and before October 1, 1986;

(b) at least $3.35 an hour on October 1, 1986, and thereafter"; and at end of (2)(b) substituted "shall not be less than $635 a month beginning

January 1, 1990" for "shall not be less than the following rates:

(i) $575 a month for the first year from July 1, 1981;

(ii) $635 a month for the second year from July 1, 1981, and thereafter". Amendment effective January 1, 1990.

Cross-References

Eight-hour maximum workday, Art. XII, sec. 2, Mont. Const.

Standard prevailing wages in public works, Title 18, ch. 2, part 4.

"Employee" defined, 39-3-402.

"Farm worker" defined, 39-3-402.

"Wage" defined, 39-3-402.

Federal minimum wage for Youth Conservation Corps, 76-21-206.

39-3-405. Overtime compensation. (1) No employer shall employ any of his employees for a workweek longer than 40 hours unless such employee receives compensation for his employment in excess of 40 hours in a workweek at a rate of not less than 1 ½ times the hourly wage rate at which he is employed.

(2) No overtime provision shall apply for farm workers.

(3) Employers of students at an amusement or recreational area that operates on a seasonal basis who furnish said students with board, lodging, or other facilities shall not employ said students for a workweek longer than 48 hours, unless such students receive compensation for their employment in excess of 48 hours in a workweek at a rate of not less than 1 ½ times the hourly wage rate at which they are employed.

History: En. Sec. 3, Ch. 417, L. 1971; amd. Sec. 1, Ch. 363, L. 1973; amd. Sec. 1, Ch. 421, L. 1975; R.C.M. 1947, 41-2303(b).

Cross-References

Eight-hour maximum workday, Art. XII, sec. 2, Mont. Const.

Department of Public Safety — work period in lieu of workweek — overtime compensation, 7-32-115.

"Employ" defined, 39-3-402.

"Employee" defined, 39-3-402.

"Wage" defined, 39-3-402.

39-3-406. Exclusions. (1) The provisions of 39-3-404 and 39-3-405 shall not apply with respect to:

(a) students participating in a distributive education program established under the auspices of an accredited educational agency;

(b) persons employed in private homes whose duties consist of menial chores such as babysitting, mowing lawns, cleaning sidewalks;

(c) persons employed directly by the head of a household to care for children dependent upon the head of the household;

(d) immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a dependent;

(e) any persons not regular employees thereof who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis;

(f) handicapped workers engaged in work which is incidental to training or evaluation programs or whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

(g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30 days of their employment;

(h) learners under the age of 18 who are employed as farm workers, provided that such exclusion shall not exceed a period of 180 days from their initial date of employment and further provided that during this exclusion period wages paid such learners may not be less than 50% of the minimum wage rate established in this part;

(i) retired or semiretired persons performing part-time incidental work as a condition of their residence on a farm or ranch;

(j) any individual employed in a bona fide executive, administrative, or professional capacity as these terms are defined and delimited by regulations of the commissioner;

(k) any individual employed by the United States of America;

(l) resident managers employed in lodging establishments or personal care facilities who, under the terms of their employment, live in the establishment or facility.

(2) The provisions of 39-3-405 do not apply to:

(a) an employee with respect to whom the United States Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 304;

(b) an employee of an employer subject to the provisions of part I of the Interstate Commerce Act;

(c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state;

(d) an outside salesman paid on a commission or contract basis who is primarily employed in selling advertising for a newspaper;

(e) a salesman, partsman, or mechanic paid on a commission or contract basis and primarily engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers;

(f) a salesman primarily engaged in selling trailers, boats, or aircraft if he is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers;

(g) a salesman paid on a commission or contract basis who is primarily engaged in selling advertising for a radio or television station employer;

(h) an employee employed as a driver or driver's helper making local deliveries who is compensated for such employment on the basis of trip rates, or other delivery payment plan, if the commissioner finds that such plan has the general purpose and effect of reducing hours worked by such employees to or below the maximum workweek applicable to them under 39-3-405;

(i) an employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways not owned or operated for profit and not operated on a sharecrop basis and which are used exclusively for supply and storing of water for agricultural purposes;

(j) an employee with respect to his employment in agriculture by a farmer, notwithstanding other employment of such employee in connection with livestock auction operations in which such farmer is engaged as an adjunct to the raising of livestock, either on his own account or in conjunction with other farmers, if such employee is:

(i) primarily employed during his workweek in agriculture by such farmer; and

(ii) paid for his employment in connection with such livestock auction operations at a wage rate not less than that prescribed by 39-3-404;

(k) an employee of an establishment commonly recognized as a country elevator, including an establishment which sells products and services used in the operation of a farm, if no more than five employees are employed by the establishment;

(l) a driver employed by an employer engaged in the business of operating taxicabs;

(m) an employee who is employed with his spouse by a nonprofit educational institution to serve as the parents of children who are orphans or one of whose natural parents is deceased or who are enrolled in such institution and reside in residential facilities of the institution so long as the children are in residence at the institution and so long as such employee and his spouse reside in such facilities and receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at an annual rate of not less than $10,000;

(n) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal if the number of employees employed by his employer in such forestry or lumbering operations does not exceed eight;

(o) an employee of a sheriff's department who is working under an established work period in lieu of a workweek pursuant to 7-4-2509(1);

(p) an employee of a municipal or county government who is working under a work period not exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee where no bargaining unit is recognized. Employment in excess of 40 hours in a 7-day, 40-hour work period must be compensated at a rate of not less than 1 ½ times the hourly wage rate for the employee.

(q) an employee of a hospital or other establishment primarily engaged in the care of the sick, disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in a 14-day period established through either a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee where no bargaining unit is recognized. Employment in excess of 8 hours per day or 80 hours in a 14-day period must be compensated for at a rate of not less than 1 ½ times the hourly wage rate for the employee.

(r) a firefighter who is working under a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative;

(s) an officer or other employee of a police department in a city of the first or second class who is working under a work period established by the chief of police under 7-32-4118;

(t) an employee of a department of public safety working under a work period established pursuant to 7-32-115.

History: (1)En. Sec. 4, Ch. 417, L. 1971; amd. Sec. 19, Ch. 94, L. 1973; R.C.M. 1947, 41-2304; (2)En. Sec. 1, Ch. 572, L. 1979; amd. Sec. 6, Ch. 603, L. 1981; amd. Sec. 1, Ch. 375, L. 1983; amd. Sec. 3, Ch. 562, L. 1983; amd. Sec. 1, Ch. 640, L. 1983; amd. Sec. 3, Ch. 256, L. 1985; amd. Sec. 1, Ch. 175, L. 1987; amd. Sec. 1, Ch. 353, L. 1987; amd. Sec. 1, Ch. 650, L. 1987.

Cross-References

Labor — hours of employment, Art. XII, sec. 2, Mont. Const.

Compensation of Deputy Sheriffs and undersheriffs, 7-4-2507 through 7-4-2509.

"Commissioner" defined, 39-3-402.

"Employees" defined, 39-3-402.

"Farm or ranch" defined, 39-3-402.

"Farm worker" defined, 39-3-402.

"Wages" defined, 39-3-402.

39-3-407. Enforcement. Enforcement of this part shall be treated as a wage claim action and shall be pursued in accordance with part 2 of this chapter, as amended. This part may also be enforced in accordance with part 5 of this chapter for the benefit of certain employees in the mineral and oil industry. The commissioner may enforce this part without the necessity of a wage assignment.

History: En. Sec. 6, Ch. 417, L. 1971; amd. Sec. 2, Ch. 363, L. 1973; R.C.M. 1947, 41-2306; amd. Sec. 1, Ch. 49, L. 1979.

39-3-408. Provisions cumulative. (1) The provisions of this part shall be in addition to other provisions now provided by law for the payment and collection of wages and salaries but shall not apply to employees covered by the Fair Labor Standards Act except as provided in subsection (2).

(2) Sections 39-3-402 and 39-3-404 shall apply to an employee covered by the Fair Labor Standards Act if state law provides a minimum wage that is higher than the minimum wage established under federal law.

History: En. Sec. 7, Ch. 417, L. 1971; amd. Sec. 3, Ch. 363, L. 1973; R.C.M. 1947, 41-2307; amd. Sec. 2, Ch. 446, L. 1987.

39-3-409. *(Effective January 1, 1990)* **Adoption of minimum wage rates.** The commissioner shall adopt rules to establish a minimum wage that must be the same minimum hourly wage rate as provided under the federal Fair Labor Standards Act (29 U.S.C. 206), but not to exceed $4 an hour.

History: En. Sec. 2, Ch. 674, L. 1989.

Compiler's Comments

Effective Date: Section 5, Ch. 674, L. 1989, provided that this section is effective January 1, 1990.

39-3-410. *(Effective January 1, 1990)* **New hire wage.** (1) In lieu of the minimum wage provided for in 39-3-404(1), an employer may pay an employee a wage of at least $3.35 an hour if the employee has not been previously employed by the employer.

(2) An employer may pay an employee the minimum wage authorized in subsection (1) for a period not to exceed 120 calendar days beginning from the date the employee is hired.

(3) An employee may not be displaced by another employee (including partial displacement, such as a reduction in the hours of nonovertime work, wages, or employment benefits) for the purpose of allowing the employer to pay the minimum wage described in this section.

History: En. Sec. 3, Ch. 674, L. 1989.

Compiler's Comments

Effective Date: Section 5, Ch. 674, L. 1989, provided that this section is effective January 1, 1990.

Part 5

Wage Protection for Certain Employees of Mineral and Oil Industry

39-3-501. Certain laws extended to certain employers in mineral and oil industry. For the purposes of this part, all the provisions of part 2 of this chapter extend to and govern every person, firm, partnership, or corporation engaged in the business of extracting or of extracting and refining or reducing metals and minerals or mining for coal or drilling for oil, except such persons, firms, partnerships, or corporations as have a free and unencumbered title to not less than one-half the fee of the property being worked. For this purpose, an outstanding unpaid or unredeemed tax sale certificate is not considered an encumbrance.

History: En. Sec. 1, Ch. 39, L. 1939; R.C.M. 1947, 41-1312; amd. Sec. 16, Ch. 397, L. 1979.

39-3-502. Operator to file statement — penalty for failure to file. (1) Every person, firm, or partnership coming within the provisions of this part shall, before commencing operations, file with the commissioner of labor and industry and also in the office of the county clerk and recorder of each county where such operations are to be carried on a verified statement showing the names and addresses of each party interested therein or, if a corporation, the names and addresses of its officers and directors, the principal place of business of such corporation, and the names and addresses of the person or persons resident of Montana designated as the person or persons upon whom service of process may be made.

(2) Every person, firm, partnership, or corporation failing to file a statement with the commissioner of labor and industry and in the offices of the county clerk and recorders, as provided in subsection (1), shall be deemed guilty of a misdemeanor and punishable as provided by law.

History: (1)En. Sec. 2, Ch. 39, L. 1939; Sec. 41-1313, R.C.M. 1947; (2)En. Sec. 3, Ch. 39, L. 1939; Sec. 41-1314, R.C.M. 1947; R.C.M. 1947, 41-1313, 41-1314.

Cross-References

Misdemeanor penalty when none specified, 46-18-212.

39-3-503. Report of violations to county attorney by commissioner. Whenever it shall appear from reliable information satisfactory to the commissioner of labor and industry that any person, firm, partnership, or corporation engaged in the business mentioned in 39-3-501 and not exempt from the effect of this part shall have failed to pay any wages or salaries due his employees as required by part 2 of this chapter, he shall have the right to deliver such information to the county attorney of the county wherein the operations of the employer are being carried on and to request such county attorney to file a complaint in the district court of said county in accordance with the provisions of this part and part 2 of this chapter.

History: En. Sec. 4, Ch. 39, L. 1939; R.C.M. 1947, 41-1315(1).

39-3-504. Report of violations directly to county attorney by employee. Any employee may make complaint directly to the county attorney relative to any violation of this part or part 2 of this chapter.

History: En. Sec. 4, Ch. 39, L. 1939; R.C.M. 1947, 41-1315(part); amd. Sec. 17, Ch. 397, L. 1979.

39-3-505. County attorney to notify commissioner of violation reported directly by employee. The county attorney of the county shall promptly notify the commissioner of labor and industry of any complaint made by any employee relative to the violation of any of the provisions of this part or part 2 of this chapter and shall in writing keep the commissioner advised of each step in any proceeding taken by the county attorney thereunder.

History: En. Sec. 4, Ch. 39, L. 1939; R.C.M. 1947, 41-1315(part); amd. Sec. 18, Ch. 397, L. 1979.

39-3-506. County attorney to file complaint in district court on belief of violation. If a county attorney believes after receiving information that the provisions of this part or part 2 of this chapter have been violated and that such violation was willful or that the financial condition of the employer is such as to endanger employees in receiving prompt payment or collection of wages, he shall file a complaint in district court. All proceedings upon such complaint must be promptly prosecuted.

History: En. Sec. 4, Ch. 39, L. 1939; R.C.M. 1947, 41-1315(part); amd. Sec. 19, Ch. 397, L. 1979.

39-3-507. Prayer for relief. Should such complaint be filed by the county attorney upon his own motion or at said request of said commissioner of labor and industry, the same shall pray that relief be had against the employer for the greater security for the payment of salaries and wages of the employees.

History: En. Sec. 4, Ch. 39, L. 1939; R.C.M. 1947, 41-1315(part).

39-3-508. Summons — service of process. (1) Upon the filing of such complaint, summons shall issue thereon and a copy of such complaint and a copy of the summons shall be served upon the employer, who shall have 10 days after such service to appear and defend such action.

(2) All orders and other process provided for in this part shall be served by the sheriff upon the employer in the same manner as a summons in a civil suit is served. Service upon any partner or member of any firm shall be considered service upon each partner and each member of the firm. In the event that the employer is a nonresident or a corporation without officers or directors within the county who cannot conveniently and promptly be found for service, then service upon the manager, superintendent, or foreman in charge of the work or, there being none such, then posting a copy of the order or other process provided to be served herein in a conspicuous place at or near the entrance to the principal workings shall be deemed sufficient service.

History: (1)En. Sec. 4, Ch. 39, L. 1939; Sec. 41-1315, R.C.M. 1947; (2)En. Sec. 7, Ch. 39, L. 1939; Sec. 41-1318, R.C.M. 1947; R.C.M. 1947, 41-1315(part), 41-1318.

Cross-References

Definitions and procedure for process and service, 25-3-101; Rule 4, M.R.Civ.P. (see Title 25, ch. 20).

39-3-509. Hearing on complaint — court order to pay wages due or appear and show cause why bond should not be required. Upon the conclusion of the hearing upon such complaint, the judge of the district court may make findings and shall issue an order to the employer in default to pay within 5 days all wages and salaries found by the court to be due and unpaid or an order to appear before the court within 10 days and show cause why a judgment and order should not issue requiring said employer to give bond for the payment of all wages and salaries then due and thereafter to accrue to his employees within said county. Service of such order shall be made at least 5 days before the date set for hearing or the date to which such hearing may be continued by the court upon good cause shown.

History: **En. Sec. 5, Ch. 39, L. 1939; R.C.M. 1947, 41-1316.**

39-3-510. Show-cause hearing — restraining order until bond furnished. Upon the hearing of such order, if the court shall determine that the default of said employer in the payment of wages and salaries was willful or that the financial condition of the employer is such as to endanger or delay or impede employees in collecting their wages and salaries or that the employer is a nonresident of the state without visible property in said county subject to execution or who has within 2 years defaulted in payroll payments, the court may adjudge and decree that the employee or employees are endangered in the collection of their just demands and the court may issue a restraining order against the employer forbidding further prosecution of operations by said employer until after the employer has furnished a good and sufficient bond, in form to be approved by the court with good and sufficient surety or sureties who can and do legally justify, and deposit said bond with the clerk of court of said county obligating the employer to pay all wages and salaries as required by part 2 of this chapter.

History: **En. Sec. 6, Ch. 39, L. 1939; R.C.M. 1947, 41-1317(part).**

Cross-References

Injunctions, Title 27, ch. 19.

39-3-511. Bond requirements. (1) Said bond may be that of a surety company licensed and authorized to do business within the state or of two owners of real estate situate in said county and who can and do justify as sureties in the same manner as sureties justify on appeal bonds or bail bonds.

(2) Said bond shall be in the sum of not less than $500 for each unit of five men or less employed by such person, firm, partnership, or corporation.

(3) Said bond shall continue in force for 1 year.

(4) Said bond shall run in the name of the state of Montana and shall be examined and approved by the judge of the district court, said approval to be endorsed thereon.

History: **En. Sec. 6, Ch. 39, L. 1939; R.C.M. 1947, 41-1317(part).**

Cross-References

Undertakings for security, Title 25, ch. 1, part 4.

39-3-512. Enjoining further operations in event bond not filed. (1) In the event that the bond ordered by the district court is not executed and filed with the county treasurer within the time fixed by the court, the court may, if it deems the persons working for such employer to be insecure in the prompt payment or collection of their wages or salaries, enjoin any and all further operations of said employer within the state for a period of 1 year at any mine or reduction works or oil well or until the order, judgment, or decree of the court shall have been fully complied with.

(2) The county attorney of the county wherein such proceedings are had or the attorney general of the state shall, at his or their discretion, file such action and prosecute the same.

History: **En. Sec. 8, Ch. 39, L. 1939; R.C.M. 1947, 41-1319(part).**

Cross-References

Injunctions, Title 27, ch. 19.

39-3-513. Costs of proceeding. The said district court shall include in any order, judgment, or decree against the employer all costs of the proceeding, which shall be taxed against the employer and paid into the clerk of the court to be by him deposited with the county treasurer to the credit of the general fund of the county.

History: **En. Sec. 8, Ch. 39, L. 1939; R.C.M. 1947, 41-1319(part).**

Cross-References

Costs, Title 25, ch. 10.

39-3-514. Punishment of employer for contempt. In event the employer fails for 30 days or more to pay the costs of the proceeding and/or fails to furnish the bond required by the court, the court may proceed against and punish said employer for contempt of court.

History: **En. Sec. 9, Ch. 39, L. 1939; R.C.M. 1947, 41-1320.**

Cross-References

Contempts, Title 3, ch. 1, part 5.

39-3-515. Publication of notice of court order. In the discretion of the court, it may order the clerk of the court to publish a brief notice or memorandum in a newspaper published in the county of the entry of the order against the employer requiring said employer to furnish said bond. Said publication shall be for 4 consecutive weeks. The cost of such publication shall be assessed against the employer as one of the costs of the proceeding.

History: **En. Sec. 10, Ch. 39, L. 1939; R.C.M. 1947, 41-1321.**

39-3-516. Review of court order by supreme court. In event any employer against whom an order to furnish the bond described in this part feels aggrieved by any order or injunction of the district court, he shall be entitled, upon payment for the transcript of record, to have his objections and exceptions reviewed and determined by the supreme court as upon a writ of certiorari.

History: **En. Sec. 12, Ch. 39, L. 1939; R.C.M. 1947, 41-1323.**

39-3-517. Suit on bond. Any person whose wages or salary has remained unpaid for 15 days or more after due shall have a right to sue upon said bond for the recovery of his wages or salary.

History: **En. Sec. 6, Ch. 39, L. 1939; R.C.M. 1947, 41-1317(part).**

39-3-518. Attorney's fee for suit on bond. In event any person whose wages or salary has remained unpaid for 15 days or more after due shall bring suit as in 39-3-517 provided, the court shall assess as costs against the unsuccessful party a reasonable attorney's fee.

History: **En. Sec. 11, Ch. 39, L. 1939; R.C.M. 1947, 41-1322.**

Cross-References

Attorney fees, Title 25, ch. 10, part 3.

39-3-519. Clarification as to construction and applicability of part. (1) Nothing contained in this part shall be considered as requiring any person, firm, partnership, or corporation to file a bond or bonds if he or it pays for all labor in full each day or where such labor has been performed upon a written building or construction contract to furnish material or other consideration as well as labor.

(2) Nothing herein shall prohibit the making or entering into of any wage or working agreement such as grubstake agreements and/or similar agreements, provided such employer or contractor keeps in force proper workers' compensation insurance.

History: En. Sec. 6, Ch. 39, L. 1939; R.C.M. 1947, 41-1317(part).

39-3-520. Remedy cumulative. The remedy herein provided for the greater security for the payment of wages and salaries and the collection thereof shall be in addition to any remedy now provided by law for the payment and collection of wages and salaries.

History: En. Sec. 13, Ch. 39, L. 1939; R.C.M. 1947, 41-1324.

Cross-References

Civil remedies in general, Title 27.

Part 6

Restaurant, Bar, and Tavern Wage Protection Act

39-3-601. Short title. This part shall be known as the "Restaurant, Bar, and Tavern Wage Protection Act".

History: En. Sec. 1, Ch. 155, L. 1965; R.C.M. 1947, 41-2001.

39-3-602. Purpose. The purpose of this part is to protect the state of Montana and employees of persons operating businesses as restaurants, bars, and taverns; to assure the payment of wages to such employees in the event the person ceases operation of his business and is unable to pay the wages due and owing to his employees; and to assure the payment of payroll taxes to the department.

History: En. Sec. 3, Ch. 155, L. 1965; amd. Sec. 2, Ch. 198, L. 1974; amd. Sec. 1, Ch. 238, L. 1975; R.C.M. 1947, 41-2003; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 366, L. 1983.

39-3-603. Definitions. For the purposes of this part, the words and phrases used herein have the following meaning:

(1) "Bar" or "tavern" means a place where liquor or beer is sold to be drunk on the premises.

(2) "Beer" means any beverage so defined in the Montana Alcoholic Beverage Code.

(3) "Business" means a commercial enterprise of any kind involving the buying and selling of goods.

(4) "Commissioner" means the commissioner of labor and industry provided for in 2-15-1701.

(5) "Department" means the department of labor and industry provided for in 2-15-1701.

(6) "Employee" means a person who works for wages or salary in the service of an employer. The term does not include a member of an employer's immediate family.

(7) "Immediate family" means the spouse, parents, children, grandchildren, brothers, or sisters of a person operating a business as a restaurant, bar, or tavern.

(8) "Liquor" has the same meaning as specified in 16-1-106.

(9) "Person" includes any establishment, firm, partnership, corporation, person, or association of persons.

(10) "Restaurant" means a public eating place where food is prepared and served for human consumption on the premises.

History: En. Sec. 4, Ch. 155, L. 1965; amd. Sec. 3, Ch. 198, L. 1974; amd. Sec. 118, Ch. 387, L. 1975; R.C.M. 1947, 41-2004; amd. Sec. 2, Ch. 366, L. 1983; amd. Sec. 1, Ch. 546, L. 1989.

Compiler's Comments

1989 Amendment: In definition of employee inserted exclusion of employer's immediate family; inserted definition of immediate family; and made minor changes in phraseology. Amendment effective July 1, 1989.

39-3-604. Bond to be filed — bond requirements. (1) Except as provided in 39-3-605 and subsection (4) of this section, a person operating a business as a restaurant, bar, or tavern is required to file a bond equal to at least double the amount of the projected semimonthly payroll with the commissioner. The bond shall at all times be kept in full force and effect, and any cancellation or revocation of the bond or withdrawal of the sureties from the bond is grounds for enjoining the operation of business, as provided for in 39-3-607, until a new bond of like tenure and effect is filed and approved.

(2) The bond required by subsection (1) of this section must be filed with the commissioner. The state of Montana must be named as the obligee, with good and sufficient sureties to be approved by the attorney general.

(3) The bond must be conditioned to assure that the employees who perform labor or other personal services are guaranteed their wages in the event the person ceases operation of the business for any reason and is unable to pay the wages due and owing the employees and to assure payment due the department as a result of payroll taxes.

(4) Except as provided in 39-3-605(2), this section does not apply to any person who has operated the same restaurant, bar, or tavern continuously since October 1, 1980.

History: Ap. p. Sec. 5, Ch. 155, L. 1965; amd. Sec. 4, Ch. 198, L. 1974; Sec. 41-2005, R.C.M. 1947; Ap. p. Sec. 6, Ch. 155, L. 1965; amd. Sec. 5, Ch. 198, L. 1974; amd. Sec. 2, Ch. 238, L. 1975; Sec. 41-2006, R.C.M. 1947; R.C.M. 1947, 41-2005, 41-2006; amd. Sec. 1, Ch. 60, L. 1979; amd. Sec. 3, Ch. 366, L. 1983; amd. Sec. 2, Ch. 546, L. 1989.

Compiler's Comments

1989 Amendment: In (1), at beginning, inserted exception clause; and made minor changes in phraseology. Amendment effective July 1, 1989.

Cross-References

Suretyship, Title 28, ch. 11, part 4.
"Bar" defined, 39-3-603.
"Business" defined, 39-3-603.
"Person" defined, 39-3-603.
"Restaurant" defined, 39-3-603.
"Tavern" defined, 39-3-603.

39-3-605. Waiver of bond — new or additional bond — exemption. (1) After 3 years of compliance with this part, the commissioner shall waive the provisions of 39-3-604 for any person showing compliance with the applicable provisions of the Fair Labor Standards Act and all the applicable laws administered by the department.

(2) Notwithstanding 39-3-604(4) and subsection (1) of this section, the commissioner may require a person operating a restaurant, bar, or tavern, including a person who has been in business since October 1, 1980, or for over 3 years, to file a new bond or a bond of a greater amount than double the semimonthly payroll whenever the person operating a restaurant, bar, or tavern defaults on the payment of wages, payroll taxes, or workers' compensation premiums.

(3) A person who owns and operates a restaurant, bar, or tavern is exempt from the provisions of 39-3-604 to the extent that 39-3-604 would otherwise require filing of a bond based on the payroll and wages attributable to members of the immediate family of the person who owns and operates the restaurant, bar, or tavern.

History: En. Sec. 10, Ch. 155, L. 1965; amd. Sec. 3, Ch. 238, L. 1975; R.C.M. 1947, 41-2010(part); amd. Sec. 4, Ch. 366, L. 1983; amd. Sec. 3, Ch. 546, L. 1989.

Compiler's Comments

1989 Amendment: Inserted (3) relating to exemption of a restaurant or bar owner from 39-3-604 in regard to a bond covering employees who are immediate family members. Amendment effective July 1, 1989.

39-3-606. Power of commissioner to discharge existing sureties and require others. The commissioner of labor and industry may, after due notice given, discharge the existing sureties from further liability and require that other sureties be provided.

History: En. Sec. 10, Ch. 155, L. 1965; amd. Sec. 3, Ch. 238, L. 1975; R.C.M. 1947, 41-2010(part).

39-3-607. Enjoining business until bond filed. If any person operates a restaurant, bar, or tavern business without having first filed a bond as required by 39-3-604 or by 39-3-605, the attorney general, the commissioner, or any citizen, group of citizens, or any association in the county where the violator operates his business may institute an action to enjoin such person from operating the business until compliance with this part has been met.

History: En. Sec. 8, Ch. 155, L. 1965; R.C.M. 1947, 41-2008; amd. Sec. 5, Ch. 366, L. 1983.

Cross-References

Injunctions, Title 27, ch. 19.
"Bar" defined, 39-3-603.
"Business" defined, 39-3-603.
"Person" defined, 39-3-603.
"Restaurant" defined, 39-3-603.
"Tavern" defined, 39-3-603.

39-3-608. Unlawful to operate business without bond. From and after October 1, 1983, it shall be unlawful for any person to operate a restaurant, bar, or tavern business without first having filed with the commissioner a bond in accordance with the requirements of 39-3-604 or 39-3-605.

History: En. Sec. 2, Ch. 155, L. 1965; amd. Sec. 1, Ch. 198, L. 1974; R.C.M. 1947, 41-2002; amd. Sec. 6, Ch. 366, L. 1983.

Cross-References

"Bar" defined, 39-3-603.
"Business" defined, 39-3-603.
"Person" defined, 39-3-603.
"Restaurant" defined, 39-3-603.
"Tavern" defined, 39-3-603.

Part 7

Contractors' Bonds for Wages and Benefits

39-3-701. Definitions. As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Commissioner" means the commissioner of labor and industry.

(2) "Contractor" means any person, firm, association, or corporation engaged in the construction business.

(3) "Resident contractor" means any person who is a bona fide resident of this state, any partnership or association, the majority of whose members are bona fide residents of this state, or any corporation organized and existing under the laws of the state of Montana.

History: **(1), (2)En. 41-2501 by Sec. 1, Ch. 208, L. 1975; Sec. 41-2701, R.C.M. 1947; (3)En. 41-2504 by Sec. 4, Ch. 208, L. 1975; Sec. 41-2704, R.C.M. 1947; R.C.M. 1947, 41-2701, 41-2704(2).**

39-3-702. Rules. The commissioner shall promulgate any rules necessary to carry out the provisions of this part.

History: **En. 41-2505 by Sec. 5, Ch. 208, L. 1975; R.C.M. 1947, 41-2705.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

39-3-703. Contractor to furnish bond for wages and fringe benefits — bond requirements. (1) Any contractor who contracts with another to do any work or perform any services for the other, except personal services of the contractor not involving work of hired employees, shall furnish a surety bond or other form of security to the other which shall be:

(a) approved by the commissioner;

(b) in an amount equal to the contractor's average monthly payroll as estimated by the commissioner;

(c) in the name of the state of Montana;

(d) for the purpose of insuring the wages and fringe benefits of all workers employed by the contractor for the contracted work;

(e) filed with the commissioner within 1 week of the making of the contract or the commencement of work thereunder, whichever comes first.

(2) Only one bond shall be required on any contractor for each year, and when the bond is filed with and approved by the commissioner, the commissioner shall certify to any person contracting with a contractor that the bond is in full force and effect.

History: **En. 41-2502 by Sec. 2, Ch. 208, L. 1975; R.C.M. 1947, 41-2702(1), (3).**

Cross-References

Suretyship, Title 28, ch. 11, part 4.

39-3-704. Exception. The provisions of this part do not apply to any resident contractor who presents to the commissioner a financial statement certified by a licensed certified public accountant attesting to a net worth of the contractor in excess of $50,000.

History: **En. 41-2504 by Sec. 4, Ch. 208, L. 1975; R.C.M. 1947, 41-2704(1).**

39-3-705. Suit on bond. Any employee employed by a contractor may bring an action on the surety bond in his own name for unpaid wages and fringe benefits.

History: **En. 41-2503 by Sec. 3, Ch. 208, L. 1975; R.C.M. 1947, 41-2703.**

39-3-706. Liability of person contracting with contractor for failure to require bond. Any person contracting with a contractor who fails to require the contractor to acquire the surety bond provided for in 39-3-703(1) is liable to the employees of that contractor for their wages and fringe benefits on that particular job.

History: **En. 41-2502 by Sec. 2, Ch. 208, L. 1975; R.C.M. 1947, 41-2702(2).**

CHAPTER 4

HOURS OF LABOR IN CERTAIN EMPLOYMENTS

Part 1 — Hours of Labor—Penalties and Liability for Violations Thereof

39-4-101. Hoisting engineers.
39-4-102. Drivers and attendants of motor buses.
39-4-103. Underground miners and smeltermen.
39-4-104. Strip mining.
39-4-105. Retail stores.
39-4-106. Telephone operators.
39-4-107. State and municipal governments, school districts, mines, mills, and smelters.
39-4-108. Repealed.
39-4-109. Cement plants and quarries.
39-4-110. Sugar refineries.
39-4-111. Restaurants.
39-4-112. Persons employed about public amusements.

Part 1

Hours of Labor — Penalties and Liability for Violations Thereof

Part Cross-References

Eight-hour maximum workday, Art. XII, sec. 2, Mont. Const.

39-4-101. Hoisting engineers. (1) It shall be unlawful for any person or persons, company, or corporation to operate or handle or to induce, persuade, or prevail upon any person or persons to operate or handle for more than 8 hours in 24 hours of each day any hoisting engine at or in any mine.

(2) This section shall apply only to such plants as are in continuous operation or are operated 16 or more hours in 24 hours of each day or at or in any mine where said hoisting engine develops 15 or more horsepower or at or in any mine wherein there are 15 or more men employed underground in 24 hours of each day. However, the provisions of this section shall not apply to any person or persons operating any hoisting engine more than 8 hours in each 24 hours for the purpose of relieving another employee in case of sickness or other unforeseen cause or causes.

(3) Any person or persons, company, or corporation who shall violate any of the provisions of this section shall upon conviction be punished by a fine of not less than $10 or more than $100. Each and every day that such person or persons, company, or corporation may continue to violate any of the provisions of this section shall be considered a separate and distinct offense and shall be punishable as such.

History: **(1), (2)En. Sec. 1, Ch. 53, L. 1903; re-en. Sec. 1734, Rev. C. 1907; re-en. Sec. 3068, R.C.M. 1921; re-en. Sec. 3068, R.C.M. 1935; Sec. 41-1101, R.C.M. 1947; (3)En. Sec. 2, Ch. 53,**

L. 1903; re-en. Sec. 1735, Rev. C. 1907; re-en. Sec. 3069, R.C.M. 1921; re-en. Sec. 3069, R.C.M. 1935; Sec. 41-1102, R.C.M. 1947; R.C.M. 1947, 41-1101, 41-1102.

Cross-References
Classification of offenses, 45-1-201.
"Misdemeanor" defined, 45-2-101.

39-4-102. Drivers and attendants of motor buses. (1) Drivers or attendants of motor buses employed in the state may not be employed for more than 8 hours in any 24-hour period. Drivers or attendants of motor buses must be allowed a rest of at least 12 hours between the completion of their services in any 24-hour period and the beginning of their services in the succeeding 24-hour period. In computing the number of hours of employment made by the provisions of this section, evidence may be introduced showing that part of such time is consumed prior to entry within the state.

(2) The provisions of this section do not apply to drivers or attendants employed by a city, town, county, or political subdivision thereof.

(3) The provisions of this section do not apply when life is in danger or property is in imminent danger of destruction; or in case of delay due to accident or impassable roads, abnormal road conditions, or snow blockades; or when mails for the drivers or attendants are delayed.

(4) "Attendant", for the purpose of this section, is defined as any employee engaged for a portion of a day driving or repairing a motor bus and who is required to remain on the vehicle as a relief driver or mechanic for time in excess of the 8-hour period for which he is rightly employed.

(5) Any employer or supervisor in charge of employees who requires a driver or attendant as above defined to labor contrary to the provisions of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $100 or more than $600 or by imprisonment of not less than 30 days or more than 7 months or both such fine and imprisonment.

(6) All motor bus companies operating lines in this state are liable in damage for all injuries to the person resulting from the violation of the provisions of this section.

History: En. Secs. 1, 2, 3, Ch. 76, L. 1935; re-en. Secs. 3069.1, 3069.2, 3069.3, R.C.M. 1935; R.C.M. 1947, 41-1103, 41-1104, 41-1105; amd. Sec. 1, Ch. 126, L. 1979; amd. Sec. 20, Ch. 397, L. 1979.

Cross-References
Classification of offenses, 45-1-201.
"Misdemeanor" defined, 45-2-101.

39-4-103. Underground miners and smeltermen. (1) The period of employment of workers in all underground mines or workings, including railroad or other tunnels, is 8 hours per day, except in cases of emergency when life and property are in imminent danger.

(2) The period of employment of workers in smelters, stamp mills, sampling works, concentrators, and all other institutions for the reduction of ores and refining of ores or metals is 8 hours per day, except in cases of emergency where life or property is in imminent danger.

(3) Any person, corporation, agent, manager, or employer who violates any of the provisions of this section is guilty of a misdemeanor and upon conviction thereof for each offense is subject to a fine of not less than $100 or more

than $600 or by imprisonment in the county jail for a period of not less than 1 month or more than 7 months or by both such fine and imprisonment.

History: (1)En. Sec. 1, p. 62, L. 1901; re-en. Sec. 1736, Rev. C. 1907; amd. Sec. 1, Ch. 21, L. 1911; re-en. Sec. 3071, R.C.M. 1921; re-en. Sec. 3071, R.C.M. 1935; Sec. 41-1107, R.C.M. 1947; (2)En. Sec. 2, p. 63, L. 1901; re-en. Sec. 1737, Rev. C. 1907; re-en. Sec. 3072, R.C.M. 1921; re-en. Sec. 3072, R.C.M. 1935; Sec. 41-1108, R.C.M. 1947; (3)En. Sec. 3, p. 63, L. 1901; re-en. Sec. 1738, Rev. C. 1907; re-en. Sec. 3073, R.C.M. 1921; amd. Sec. 1, Ch. 116, L. 1929; re-en. Sec. 3073, R.C.M. 1935; Sec. 41-1109, R.C.M. 1947; R.C.M. 1947, 41-1107, 41-1108, 41-1109; amd. Sec. 21, Ch. 397, L. 1979.

Cross-References

Administrative rulemaking procedure, Title 2, ch. 4, parts 1 through 3.

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

39-4-104. Strip mining. (1) For the purpose of this section, "strip mining" is defined as the removal of the overburden and coal or other materials from the ground and all of the operations pertaining thereto, without the necessity of providing timbers for the holding of said ground in place.

(2) A period of not more than 8 hours will constitute a day's labor of all employees working in strip mining, except in cases of emergencies for the protection of life or property when same is in danger.

(3) Any person, company, corporation, or lessee of the same who shall violate the provisions of this section shall upon conviction be punished by a fine of not less than $50 or more than $600 or by imprisonment of not less than 30 days or more than 7 months or both such fine and imprisonment. Each and every day that such person, company, corporation, or lessee may continue to violate the provisions of this section shall be considered a separate and distinct offense and shall be punished as such.

History: En. Secs. 1, 2, 3, Ch. 76, L. 1933; re-en. Secs. 3546.7, 3546.8, 3546.9, R.C.M. 1935; R.C.M. 1947, 41-1110, 41-1111, 41-1112.

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

39-4-105. Retail stores. (1) A period of 8 hours shall constitute a day's work and a period of not to exceed 48 hours shall constitute a week's work in all cities and towns having a population of 2,500 or over for all persons employed in retail stores and in all leased businesses where the lessor dictates the price, kind of merchandise that is sold, and the hours and conditions of operation of the business; all persons employed in delivering goods sold in such stores; all persons employed in wholesale warehouses used for supplying retail establishments with goods; and all persons employed in delivering goods to retail establishments from such wholesale warehouses.

(2) The provisions of this section shall not apply to registered pharmacists or assistant pharmacists.

(3) Any person, corporation, agent, manager, or employer who shall violate any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $50 or more than $600 or by imprisonment in the county jail for not less than 30 days or more than 7 months or by both such fine and imprisonment.

History: (1)En. Sec. 1, Ch. 8, Ex. L. 1933; re-en. Sec. 3073.1, R.C.M. 1935; Sec. 41-1113, R.C.M. 1947; (2)En. Sec. 3, Ch. 8, Ex. L. 1933; re-en. Sec. 3073.3, R.C.M. 1935; Sec. 41-1115, R.C.M. 1947; (3)En. Sec. 2, Ch. 8, Ex. L. 1933; re-en. Sec. 3073.2, R.C.M. 1935; Sec. 41-1114, R.C.M. 1947; R.C.M. 1947, 41-1113, 41-1114, 41-1115.

Cross-References
Classification of offenses, 45-1-201.
"Misdemeanor" defined, 45-2-101.

39-4-106. Telephone operators. (1) On all lines of public telephones operated in whole or in part within this state, it shall hereafter be unlawful for any owner, lessee, company, or corporation to hire or employ any operator or operators, other person or persons to run or operate a telephone board or boards for more than 9 hours in 24 hours in cities or towns having a population of 3,000 inhabitants or over.

(2) The provisions of this section shall not apply to any person or persons, operator or operators operating any telephone board or boards more than 9 hours in each 24 for the purpose of relieving another employee in case of sickness or other unforeseen cause or causes.

(3) Any owner, lessee, company, or corporation who shall violate any of the provisions of this section shall upon conviction be punished by a fine of not less than $100 or more than $500. Each and every day that such owner, lessee, company, or corporation may continue to violate any of the provisions of this section shall be considered a separate and distinct offense and shall be punished as such.

History: (1), (2)En. Sec. 1, Ch. 75, L. 1909; re-en. Sec. 3074, R.C.M. 1921; re-en. Sec. 3074, R.C.M. 1935; Sec. 41-1116, R.C.M. 1947; (3)En. Sec. 2, Ch. 75, L. 1909; re-en. Sec. 3075, R.C.M. 1921; re-en. Sec. 3075, R.C.M. 1935; Sec. 41-1117, R.C.M. 1947; R.C.M. 1947, 41-1116, 41-1117.

Cross-References
Classification of offenses, 45-1-201.
"Misdemeanor" defined, 45-2-101.

39-4-107. State and municipal governments, school districts, mines, mills, and smelters. (1) A period of 8 hours constitutes a day's work in all works and undertakings carried on or aided by any municipal or county government, the state government, or a first-class school district, and on all contracts let by them, and for all janitors (except in courthouses of sixth- and seventh-class counties), engineers, firefighters, caretakers, custodians, and laborers employed in or about any buildings, works, or grounds used or occupied for any purpose by such municipal, county, or state government or first-class school district. A period of 8 hours constitutes a day's work in mills and smelters for the treatment of ores, in underground mines, and in the washing, reducing, and treatment of coal. This subsection does not apply in the event of an emergency when life or property is in imminent danger or to the situations specified in subsections (3) and (4).

(2) The provisions of subsection (1) do not apply to firefighters who are working a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative.

(3) In counties where regular road and bridge departments are maintained, the county commissioners may, with the approval of the employees or their duly constituted representative, establish a 40-hour workweek consisting of 4 consecutive 10-hour days. No employee may be required to work in excess of 8 hours in any one workday if he prefers not to.

(4) In municipal and county governments, the employer and employee may agree to a workday of more than 8 hours and to a 7-day, 40-hour work period:

(a) through a collective bargaining agreement when a collective bargaining unit represents the employee; or

(b) by the mutual agreement of the employer and employee when no bargaining unit is recognized.

History: **(1) thru (3)En. Sec. 1, Ch. 50, L. 1905; amd. Sec. 1, Ch. 108, L. 1907; re-en. Sec. 1739, Rev. C. 1907; amd. Sec. 1, Ch. 30, L. 1917; re-en. Sec. 3079, R.C.M. 1921; Cal. Pol. C. Secs. 3244, 3245; amd. Sec. 2, Ch. 116, L. 1929; re-en. Sec. 3079, R.C.M. 1935; amd. Sec. 1, Ch. 135, L. 1943; amd. Sec. 1, Ch. 244, L. 1957; amd. Sec. 1, Ch. 395, L. 1975; Sec. 41-1121, R.C.M. 1947; (4)En. Sec. 2, Ch. 50, L. 1905; amd. Sec. 2, Ch. 108, L. 1907; re-en. Sec. 1740, Rev. C. 1907; re-en. Sec. 3080, R.C.M. 1921; amd. Sec. 3, Ch. 116, L. 1929; re-en. Sec. 3080, R.C.M. 1935; Sec. 41-1122, R.C.M. 1947; R.C.M. 1947, 41-1121, 41-1122; amd. Sec. 22, Ch. 397, L. 1979; amd. Sec. 2, Ch. 375, L. 1983; amd. Sec. 2, Ch. 640, L. 1983.**

Cross-References

Labor — hours of employment, Art. XII, sec. 2, Mont. Const.

39-4-108. Repealed. Sec. 1, Ch. 381, L. 1979.

History: **(1), (2)En. Sec. 1, Ch. 5, L. 1907; Sec. 1741, Rev. C. 1907; re-en. Sec. 3081, R.C.M. 1921; re-en. Sec. 3081, R.C.M. 1935; amd. Sec. 1, Ch. 206, L. 1969; Sec. 41-1123, R.C.M. 1947; (3)En. Sec. 3, Ch. 5, L. 1907; Sec. 1743, Rev. C. 1907; re-en. Sec. 3083, R.C.M. 1921; re-en. Sec. 3083, R.C.M. 1935; Sec. 41-1125, R.C.M. 1947; (4), (5)En. Sec. 2, Ch. 5, L. 1907; Sec. 1742, Rev. C. 1907; re-en. Sec. 3082, R.C.M. 1921; re-en. Sec. 3082, R.C.M. 1935; Sec. 41-1124, R.C.M. 1947; R.C.M. 1947, 41-1123, 41-1124, 41-1125; amd. Sec. 23, Ch. 397, L. 1979.**

39-4-109. Cement plants and quarries. (1) A period of 8 hours shall constitute a day's work, except in cases of emergency where life and property are in imminent danger, for all persons employed in or about cement plants and at quarries.

(2) Any person, corporation, agent, manager, or employer who shall violate any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $50 or more than $600 or by imprisonment in the county jail for not less than 30 days or more than 7 months or by both such fine and imprisonment.

History: **(1)En. Sec. 1, Ch. 77, L. 1933; re-en. Sec. 3083.1, R.C.M. 1935; Sec. 41-1126, R.C.M. 1947; (2)En. Sec. 2, Ch. 77, L. 1933; re-en. Sec. 3083.2, R.C.M. 1935; Sec. 41-1127, R.C.M. 1947; R.C.M. 1947, 41-1126, 41-1127; amd. Sec. 1, Ch. 281, L. 1985.**

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

39-4-110. Sugar refineries. (1) A period of not to exceed 8 hours constitutes a day's work for all persons employed in or about sugar refineries, except in a case of emergency when life or property is in danger.

(2) The provisions of this section do not apply to beet receiving station employees or superintendents, master mechanics, or beet-end, sugar-end, and Steffan house foremen.

(3) Any person, corporation, agent, manager, or employer who violates the provisions of this section is guilty of a misdemeanor and upon conviction thereof is punishable by a fine of not less than $50 or more than $600 or by imprisonment in the county jail for not less than 30 days or more than 7 months or by both such fine and imprisonment.

History: **En. Secs. 1, 2, 3, Ch. 90, L. 1933; re-en. Secs. 3083.3, 3083.4, 3083.5, R.C.M. 1935; R.C.M. 1947, 41-1128, 41-1129, 41-1130; amd. Sec. 24, Ch. 397, L. 1979.**

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

39-4-111. Restaurants. (1) A period of not more than 8 hours shall constitute a day's work, and a period of not to exceed 48 hours shall constitute a week's work for persons employed in or about restaurants, cafes, lunch counters, and other commercial eating establishments. The hours of work must be so arranged that persons employed in or about restaurants, cafes, lunch counters, and other commercial eating establishments shall not be on duty more than 8 hours in the aggregate of any 12 consecutive hours. Such persons shall have at least 12 consecutive hours off duty.

(2) The provisions of this section shall not apply to any person or persons working more than 8 hours during any 12 consecutive hours or more than 48 hours during any week for the purpose of relieving another employee in case of sickness or where the health of the public is imperiled, where life and property are in imminent danger, or for other unforeseen cause or causes.

(3) Any person, corporation, manager, agent, or employer who shall violate any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $25 or more than $50 or by imprisonment in the county jail for not less than 15 days or more than 60 days or by both such fine and imprisonment.

History: **(1), (2)En. Sec. 1, Ch. 199, L. 1939; Sec. 41-1131, R.C.M. 1947; (3)En. Sec. 2, Ch. 199, L. 1939; Sec. 41-1132, R.C.M. 1947; R.C.M. 1947, 41-1131, 41-1132.**

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

39-4-112. Persons employed about public amusements. (1) A period of not to exceed 8 hours shall constitute a day's work and a period of not to exceed 48 hours shall constitute a week's work for persons employed or working in or participating in and about any carnival, circus, derby show, walkathon, marathon dance, marathon race, marathon walk, or other endurance contest by whatever name it may be called within the state. The hours of work must be so arranged that persons employed in or participating or contesting in such an exhibition, show, or contest shall not be on duty more than 8 hours in the aggregate of any 12 consecutive hours. Such persons shall have at least 12 consecutive hours off duty.

(2) The provisions of this section shall not apply to any traveling circus or carnival which does not remain in any one county of the state for a period of more than 3 days and shall not apply to any person or persons working more than 8 hours in each 12 hours for the purpose of relieving another employee in case of sickness or where a breakdown in machinery occurs or where life or property is in imminent danger.

(3) Any person, corporation, agent, manager, employer, employee, contestant, or participant who shall violate the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished for the first offense by a fine of not less than $50. For a second offense, he shall be punished by a fine of not less than $100 or more than $500 or by imprisonment in the county jail for not less than 90 days or more than 6 months or by both such fine and imprisonment. For a third or subsequent offense, he shall be punished by a fine of $500 and imprisonment in the county jail for a term of 6 months. Each day's violation of this section shall constitute a separate offense within the meaning of this section.

History: **(1), (2)En. Sec. 1, Ch. 21, L. 1941; Sec. 41-1133, R.C.M. 1947; (3)En. Sec. 2, Ch. 21, L. 1941; Sec. 41-1134, R.C.M. 1947; R.C.M. 1947, 41-1133, 41-1134.**

Cross-References
Classification of offenses, 45-1-201.
"Misdemeanor" defined, 45-2-101.

CHAPTER 5

THE EMPLOYMENT AGENCY ACT

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Part 1

General Provisions

39-5-101. Short title. This chapter shall be known and cited as "The Employment Agency Act".

History: En. Sec. 1, Ch. 430, L. 1971; R.C.M. 1947, 41-1417.

39-5-102. Definitions. Unless a different meaning is clearly required by the context, the following words and phrases, as used in this chapter, have the following meanings:

(1) (a) "Employment agency" is synonymous with "agency" and means any business in which any part of the business's gross or net income is derived from a fee received from applicants and in which any of the following activities are engaged in:

(i) the offering, promising, procuring, or attempting to procure employment for applicants; or

(ii) the giving of information regarding where and from whom employment may be obtained.

(b) In addition, the term "employment agency" means and includes any person, bureau, organization, or school which for profit, by advertisement or otherwise, offers as one of its main objects or purposes to procure employment for any person who pays for its services or which collects tuition or charges for service of any nature where the main object of the person paying the same is to secure employment.

(c) The term "employment agency" does not include labor union organizations, temporary service contractors, proprietary schools, musical booking services, agents for professional athletes, or the Montana state employment agency.

(2) "Temporary service contractors" means any person, firm, association, or corporation conducting a business which consists of employing individuals directly for the purpose of furnishing such individuals on a part-time or temporary basis to others.

(3) "Employer" means any person, firm, corporation, partnership, or association employing or seeking to enter into an arrangement to employ a person through the medium or service of an employment agency.

(4) "Applicant", except when used to describe an applicant for an employment agency license, means any person, whether employed or unemployed, seeking or entering into any arrangement for his employment or change of his employment through the medium or service of an employment agency.

(5) "Department" means the department of commerce provided for in 2-15-1801.

(6) "Fee" means a placement fee. A placement fee is a fee charged by an agency for placement that is the service of referring an applicant to an employer for employment and which results in employment of the applicant. A placement fee does not include a fee charged for a service offered in addition to a placement service.

(7) "Person" includes an individual, a firm, a corporation, a partnership, or an association.

(8) "Musical booking service" means any person, firm, association, or corporation conducting a business which consists solely of obtaining, obtaining offers of, and negotiating employment for individuals or groups of individuals for musical entertainment purposes.

(9) "Agents for professional athletes" means any person, firm, association, or corporation conducting a business that consists solely of obtaining, obtaining offers of, and negotiating contracts of employment of professional athletes.

History: En. Sec. 2, Ch. 430, L. 1971; R.C.M. 1947, 41-1418; amd. Sec. 1, Ch. 156, L. 1979; amd. Sec. 25, Ch. 397, L. 1979; amd. Sec. 1, Ch. 33, L. 1981; amd. Sec. 1, Ch. 483, L. 1987.

39-5-103. Administration — rules. The department shall administer the provisions of this chapter and shall issue from time to time reasonable rules for enforcing and carrying out the provisions and purposes of this chapter.

History: En. Sec. 7, Ch. 430, L. 1971; R.C.M. 1947, 41-1423(1); amd. Sec. 4, Ch. 483, L. 1987.

Cross-References

"Department" defined, 39-5-102.

39-5-104. Provisions of chapter exclusive. The provisions of this chapter relating to the regulation of private employment agencies shall be exclusive.

History: En. Sec. 22, Ch. 430, L. 1971; R.C.M. 1947, 41-1438(1).

39-5-105. Power of political subdivision to license for revenue purposes not affected. This chapter shall not be construed to affect or reduce the authority of any political subdivision of the state to provide for the licensing of private employment agencies solely for revenue purposes.

History: En. Sec. 22, Ch. 430, L. 1971; R.C.M. 1947, 41-1438(2).

Part 2

Licensing

39-5-201. Conducting business without license a misdemeanor. It shall be a misdemeanor for any person to conduct an employment agency business in this state unless he has an employment agency license issued pursuant to the provisions of this chapter.

History: En. Sec. 8, Ch. 430, L. 1971; R.C.M. 1947, 41-1424.

Cross-References

"Employment agency" defined, 39-5-102.
"Person" defined, 39-5-102.
Classification of offenses, 45-1-201.
"Misdemeanor" defined, 45-2-101.
Penalty for misdemeanor, 46-18-212.

39-5-202. Application for license or renewal. (1) Every applicant for an employment agency license or a renewal thereof shall file with the department a written application stating the name and address of the applicant, the street and number of the building in which the business of the employment agency is to be conducted, the name of the person who is to have the general management of the office, the name under which the business of the office is to be carried on, and whether or not the applicant is pecuniarily interested in the business to be carried on under the license. The application must be signed by the applicant and sworn to before a notary public and must identify anyone holding over 20% interest in the agency.

(2) If the applicant is a corporation, the application must state the names and addresses of the officers and directors of the corporation and must be signed and sworn to by the president and secretary thereof before a notary public.

(3) If the applicant is a partnership, the application must also state the names and addresses of all partners therein and must be signed and sworn to by all of them before a notary public.

(4) The application must also state whether or not the applicant, at the time of making the application or at any previous time, has been engaged in or interested in or employed by anyone engaged in the business of an employment agency.

(5) All applications for employment agency licenses must be accompanied by a copy of the form of contract to be used between the agency and the applicant.

History: En. Sec. 10, Ch. 430, L. 1971; R.C.M. 1947, 41-1426; amd. Sec. 26, Ch. 397, L. 1979; amd. Sec. 4, Ch. 483, L. 1987.

Cross-References

"Applicant" defined, 39-5-102.
"Department" defined, 39-5-102.
"Employment agency" defined, 39-5-102.
"Person" defined, 39-5-102.

39-5-203. Grounds for denial, suspension, or revocation of license. The department may by order deny, suspend, or revoke the license of any employment agency if he finds that the applicant or licensee:

(1) was previously the holder of a license issued under this chapter which was revoked for cause and never reissued by the department or which license was suspended for cause and the terms of the suspension have not been fulfilled;

(2) has been found guilty of any felony within the past 5 years involving moral turpitude or for any misdemeanor concerning fraud or conversion or suffering any judgment in any civil action involving willful fraud, misrepresentation, or conversion;

(3) has made a false statement of a material fact in his application or in any data attached thereto;

(4) has violated any provisions of this chapter or failed to comply with any rule issued by the department pursuant to this chapter.

History: En. Sec. 13, Ch. 430, L. 1971; R.C.M. 1947, 41-1429; amd. Sec. 4, Ch. 483, L. 1987.

Cross-References

"Applicant" defined, 39-5-102.
"Department" defined, 39-5-102.
"Employment agency" defined, 39-5-102.

39-5-204. License fees. The following fees shall be charged by the department to those parties licensed as employment agencies:

(1) original applications, $100;
(2) renewal per year, $100;
(3) branch license, both original and renewal, $100;
(4) transfer of license, $25;
(5) approval of amended or new contracts, $15 per contract.

History: En. Sec. 14, Ch. 430, L. 1971; R.C.M. 1947, 41-1430; amd. Sec. 4, Ch. 483, L. 1987.

Cross-References

"Department" defined, 39-5-102.

39-5-205. Disposition of license fees. All license fees shall revert to department of commerce to be used for administration of this chapter.

History: En. Sec. 22, Ch. 430, L. 1971; R.C.M. 1947, 41-1438(3); amd. Sec. 5, Ch. 483, L. 1987.

39-5-206. Bond of licensee. Before conducting any business as an employment agency, each licensee shall file with the department a surety bond in the sum of $2,000 running to the state of Montana for the benefit of any person injured or damaged as a result of any violation by the licensee or his agent of any of the provisions of this chapter or of any rule adopted by the department pursuant to 39-5-103.

History: **En. Sec. 9, Ch. 430, L. 1971; amd. Sec. 3, Ch. 237, L. 1975; R.C.M. 1947, 41-1425; amd. Sec. 4, Ch. 483, L. 1987.**

Cross-References

Suretyship, Title 28, ch. 11, part 4.
"Department" defined, 39-5-102.
"Employment agency" defined, 39-5-102.
"Person" defined, 39-5-102.

39-5-207. License to be conspicuously displayed. Every license or a verified copy thereof shall be displayed in a conspicuous place in each office of the employment agency.

History: **En. Sec. 17, Ch. 430, L. 1971; R.C.M. 1947, 41-1433(1).**

Cross-References

"Employment agency" defined, 39-5-102.

39-5-208. Expiration of license. An employment agency license shall expire June 30.

History: **En. Sec. 11, Ch. 430, L. 1971; R.C.M. 1947, 41-1427.**

Cross-References

"Employment agency" defined, 39-5-102.

39-5-209. Consent required prior to transfer of license or connection of additional persons with business. No license granted pursuant to this chapter shall be transferable without the consent of the department. No employment agency shall permit any person not mentioned in the license application to become connected with the business as an owner, member, officer, or director without the consent of the department. Consent may be withheld for any reason for which an original application for a license might have been rejected if the person in question had been mentioned therein.

History: **En. Sec. 12, Ch. 430, L. 1971; R.C.M. 1947, 41-1428; amd. Sec. 4, Ch. 483, L. 1987.**

Cross-References

"Department" defined, 39-5-102.
"Employment agency" defined, 39-5-102.
"Person" defined, 39-5-102.

Part 3

Contracts, Fees, and General Operation of Business

39-5-301. Records to be kept. (1) Each employment agency shall keep records of all services rendered employers and applicants. These records shall contain the name and address of the employer by whom the services were solicited, the name and address of the applicant, kind of position ordered by the employer, kind of position accepted by the applicant, probable duration of the employment, if known, rate of wage or salary to be paid the applicant, amount of the employment agency's fee, dates and amounts of refund, if any, and reason for such refund, and the contract agreed to between the agency and applicant.

(2) Unless otherwise provided by rules adopted by the department, such records shall be maintained for a period of 3 years from the date in which they are made.

History: **En. Sec. 3, Ch. 430, L. 1971; R.C.M. 1947, 41-1419(part); amd. Sec. 4, Ch. 483, L. 1987.**

Cross-References
"Department" defined, 39-5-102.
"Employer" defined, 39-5-102.
"Employment agency" defined, 39-5-102.
"Person" defined, 39-5-102.

39-5-302. Applicant to receive contract — required contents of contract. An employment agency shall provide each applicant with a copy of the contract between the applicant and employment agency. Such contract shall contain the following:

(1) the name, address, and telephone number of the employment agency;

(2) trade name, if any;

(3) the date of the contract;

(4) the name of the applicant;

(5) the amount of the fee to be charged the applicant;

(6) a notice in eight-point boldface type or larger directly above the space reserved in the contract for the signature of the buyer. The caption, "NOTICE TO APPLICANT — READ BEFORE SIGNING" shall precede the body of the notice and shall be in ten-point boldface type or larger. The notice shall read as follows: "This is a contract. If you accept employment with any employer through (name of employment agency), you will be liable for the payment of the fee as set out above. Do not sign this contract before you read it or if any spaces intended for the agreed terms are left blank. You are entitled to a copy of this contract at the time you sign it."

History: En. Sec. 4, Ch. 430, L. 1971; R.C.M. 1947, 41-1420.

Cross-References
Contracts and their interpretation, Title 28, ch. 2 and 3.
"Applicant" defined, 39-5-102.
"Employer" defined, 39-5-102.
"Employment agency" defined, 39-5-102.

39-5-303. Regulation of fees — disapproval of contract. (1) The fee charged by any employment agency for its services will be a percentage of the first full month's gross income of any person placed in employment, as provided for in the agency's fee schedule. The percentage charged must be determined by the agency and is not subject to disapproval by the department.

(2) No applicant may be required to pay more than one fee per placement.

(3) No employment agency may impose a fee in excess of that agreed to in writing.

(4) A fee schedule must be printed on all contracts, and a copy of the contract containing the fee schedule must be given to each applicant prior to any discussion of available employment.

(5) Prior to using any contract in the transaction of its business with applicants, each employment agency shall obtain the department's approval for the use of such contract. The department shall disapprove any proposed contract which either tends to be or is vague, deceitful, or misrepresentative.

History: En. Sec. 5, Ch. 430, L. 1971; R.C.M. 1947, 41-1421(part); amd. Sec. 1, Ch. 365, L. 1981; amd. Sec. 1, Ch. 339, L. 1983; amd. Sec. 4, Ch. 483, L. 1987.

Cross-References
"Applicant" defined, 39-5-102.
"Department" defined, 39-5-102.
"Employment agency" defined, 39-5-102.

39-5-304. False or fraudulent advertisement prohibited — disclosure requirements of advertisement. No employment agency shall knowingly cause to be printed or published a false or fraudulent notice or advertisement for obtaining work or employment. All advertising by a licensee shall signify that it is an employment agency solicitation.

History: En. Sec. 17, Ch. 430, L. 1971; R.C.M. 1947, 41-1433(4).

Cross-References

"Employment agency" defined, 39-5-102.

39-5-305. Agency not to induce employee to quit or employer to discharge. No licensee or agent of the licensee shall solicit, persuade, or induce an employee to leave any employment in which the licensee or agent of the licensee has placed the employee, nor shall any licensee or agent of the licensee persuade or induce or solicit any employer to discharge any employee.

History: En. Sec. 17, Ch. 430, L. 1971; R.C.M. 1947, 41-1433(3).

Cross-References

"Employer" defined, 39-5-102.

39-5-306. Agency not to refer applicant where strike or lockout exists. No licensee shall refer an applicant to an employer where there is a strike or lockout at the place of proposed employment if such licensee has knowledge that such condition exists.

History: En. Sec. 17, Ch. 430, L. 1971; R.C.M. 1947, 41-1433(5).

Cross-References

"Applicant" defined, 39-5-102.
"Employer" defined, 39-5-102.
Strikebreaker prohibitions, Title 39, ch. 33, part 2.

39-5-307. Agency to reconfirm job opening. Prior to referring an applicant with the prospective employer for employment, the employment agency shall reconfirm that the job opening does still exist and document this on the job order.

History: En. Sec. 6, Ch. 430, L. 1971; amd. Sec. 2, Ch. 237, L. 1975; R.C.M. 1947, 41-1422.

Cross-References

"Applicant" defined, 39-5-102.
"Employer" defined, 39-5-102.
"Employment agency" defined, 39-5-102.

39-5-308. When agency may charge a fee. (1) No employment agency shall charge or accept a fee from an applicant without complying with the terms of a written contract as specified in 39-5-302 and then only after such agency has been responsible for referring such job applicant to an employer or such employer to a job applicant and where as a result thereof such job applicant has been employed by such employer.

(2) No fee shall be solicited or accepted as an application or registration fee by any employment agency solely for the purpose of being registered as an applicant for employment.

(3) No fee shall be charged an applicant referred to a state employment office or any organization having exclusive hiring hall procedures as provided in the National Labor Relations Act.

History: (1)En. Sec. 15, Ch. 430, L. 1971; Sec. 41-1431, R.C.M. 1947; (2)En. Sec. 17, Ch. 430, L. 1971; Sec. 41-1433, R.C.M. 1947; (3)En. Sec. 5, Ch. 430, L. 1971; Sec. 41-1421, R.C.M. 1947; R.C.M. 1947, 41-1421(part), 41-1431, 41-1433(2); amd. Sec. 2, Ch. 483, L. 1987.

Cross-References

"Applicant" defined, 39-5-102.
"Employer" defined, 39-5-102.
"Employment agency" defined, 39-5-102.

39-5-309. Repealed. Sec. 4, Ch. 365, L. 1981.

History: En. 41-1431.1 by Sec. 1, Ch. 237, L. 1975; R.C.M. 1947, 41-1431.1(1), (2).

39-5-310. Payment of fee when applicant referred by two agencies. When an applicant is referred to the same position by two employment agencies, the fee shall be paid to the agency that first contacted the applicant concerning the specific opening, provided that such agency has given the name of the employer to the applicant and has arranged an interview or submitted a resume to the employer within 10 days of such contact with the applicant.

History: En. Sec. 17, Ch. 430, L. 1971; R.C.M. 1947, 41-1433(7); amd. Sec. 2, Ch. 365, L. 1981.

Cross-References

"Applicant" defined, 39-5-102.

"Employer" defined, 39-5-102.

39-5-311. Fees to be returned in certain cases. (1) Where an applicant for employees or employment who has paid a fee fails to secure or refuses to accept employees or employment, such fee shall be returned in cash within 7 days after demand.

(2) If employment obtained for an applicant ends in less than 100 calendar days from the first day of employment, regardless of the reason, the fee charged by the agency will be reduced by 1% of the fee for each calendar day remaining of the 100 days.

(3) Any employment agency which collects, receives, or retains a fee or other payment contrary to the provisions of this chapter or to the rules adopted pursuant to this chapter shall return the excessive portion of the fee within 7 days after receiving a demand therefor from the department.

History: (1), (2)En. 41-1431.1 by Sec. 1, Ch. 237, L. 1975; Sec. 41-1431.1, R.C.M. 1947; (3)En. Sec. 16, Ch. 430, L. 1971; Sec. 41-1432, R.C.M. 1947; R.C.M. 1947, 41-1431.1(3), 41-1432; amd. Sec. 3, Ch. 365, L. 1981; amd. Sec. 4, Ch. 483, L. 1987.

Cross-References

"Applicant" defined, 39-5-102.

"Department" defined, 39-5-102.

"Employment agency" defined, 39-5-102.

39-5-312. Agency not to share fees with employer. No licensee or agent of a licensee shall directly or indirectly split, divide, or share with an employer any fee, charge, or compensation received from any applicant who has obtained employment with such employer or with any other person connected with the business of such employer.

History: En. Sec. 17, Ch. 430, L. 1971; R.C.M. 1947, 41-1433(6).

Cross-References

"Applicant" defined, 39-5-102.

"Employer" defined, 39-5-102.

"Person" defined, 39-5-102.

Part 4

Investigations and Enforcement

39-5-401. Complaints against employment agencies. Upon receiving a complaint against any employment agency, the department shall forward the complaint to the county attorney having jurisdiction in the matter. The county attorney may request or subpoena any documents related to the complaint.

History: (1), (2)En. Sec. 7, Ch. 430, L. 1971; Sec. 41-1423, R.C.M. 1947; (3)En. Sec. 3, Ch. 430, L. 1971; Sec. 41-1419, R.C.M. 1947; R.C.M. 1947, 41-1419(part), 41-1423(2), (3); amd. Sec. 3, Ch. 483, L. 1987.

Cross-References

Depositions and discovery, Rules 26 through 37, M.R.Civ.P. (see Title 25, ch. 20).

Subpoenas generally, Rule 45, M.R.Civ.P. (see Title 25, ch. 20); Title 26, ch. 2.

"Department" defined, 39-5-102.

"Employment agency" defined, 39-5-102.

39-5-402. Department to forward complaints to agency involved or agency association. Any complaints filed with the department of commerce shall be sent to that private employment agency involved or to the Montana private employment agency association.

History: En. 41-1434.1 by Sec. 4, Ch. 237, L. 1975; R.C.M. 1947, 41-1434.1; amd. Sec. 5, Ch. 483, L. 1987.

Cross-References

"Employment agency" defined, 39-5-102.

39-5-403. Referral of violations to prosecuting attorneys — restraining actions. The department may refer such evidence as may be available to him concerning violations of this chapter or of any rule adopted hereunder to the attorney general or the county attorney of the county wherein the alleged violation arose who may, in his discretion, with or without such a reference, in addition to any other action he might commence, bring an action in the name of the state against any person to restrain and prevent the doing of any act or practice prohibited by this chapter.

History: En. Sec. 18, Ch. 430, L. 1971; R.C.M. 1947, 41-1434; amd. Sec. 27, Ch. 397, L. 1979; amd. Sec. 4, Ch. 483, L. 1987.

Cross-References

Injunctions, Title 27, ch. 19.

"Department" defined, 39-5-102.

"Person" defined, 39-5-102.

39-5-404. Written assurance of discontinuance. In the enforcement of this chapter, the attorney general or the county attorney may accept an assurance of discontinuance from any person deemed in violation of any provisions of this chapter. Any such assurance shall be in writing and shall be filed with and subject to the approval of the district court of the county in which the alleged violator resides or has his principal place of business.

History: En. Sec. 19, Ch. 430, L. 1971; R.C.M. 1947, 41-1435; amd. Sec. 28, Ch. 397, L. 1979.

Cross-References

"Person" defined, 39-5-102.

39-5-405. Civil penalty for violating court order. Any person who violates the terms of any court order or temporary or permanent injunction issued pursuant to this chapter shall forfeit and pay a civil penalty of not more than $2,000. For the purpose of this section, the court issuing any injunction shall retain continuing jurisdiction and in such cases the attorney general or the county attorney acting in the name of the state may petition for the recovery of civil penalties.

History: En. Sec. 20, Ch. 430, L. 1971; R.C.M. 1947, 41-1436; amd. Sec. 29, Ch. 397, L. 1979.

Cross-References

Injunctions, Title 27, ch. 19.

"Person" defined, 39-5-102.

39-5-406. Jurisdiction over nonresidents. Personal service of any process in an action under this chapter may be made upon any person outside the state if such person has engaged in conduct in violation of this chapter, which conduct has had impact in this state which this chapter reprehends.

Such person shall be deemed to have thereby submitted himself to the jurisdiction of the courts of this state.

History: **En. Sec. 21, Ch. 430, L. 1971; R.C.M. 1947, 41-1437.**

Cross-References

Service outside the state, Rule 4D(3), M.R.Civ.P. (see Title 25, ch. 20).

"Person" defined, 39-5-102.

CHAPTER 6

APPRENTICESHIP

Part 1 — General Provisions

39-6-101. Duties of department.
39-6-102. Powers of department.
39-6-103. Responsibilities of state and local boards responsible for vocational education.
39-6-104. Local and state joint apprenticeship committees.
39-6-105. Apprenticeship agreements.
39-6-106. Contents of apprenticeship agreements — credit for prior training or experience.
39-6-107. Provisions of chapter voluntary.

Part 1

General Provisions

39-6-101. Duties of department. (1) The department of labor and industry shall:

(a) encourage and promote the making of apprenticeship agreements conforming to the standards established by or in accordance with this chapter;

(b) register such apprenticeship agreements as are in the best interests of the apprenticeship and conform to the standards established by or in accordance with this chapter;

(c) keep a record of apprenticeship agreements and, upon performance thereof, issue certificates of completion of apprenticeship;

(d) terminate or cancel any apprenticeship agreements in accordance with the provisions of such agreements; and

(e) provide assistance for the development of on-the-job training programs in nonapprenticeable occupations;

(f) establish standards for apprenticeship agreements in conformity with the provisions of this chapter;

(g) issue such rules as may be necessary to carry out the intent and purposes of this chapter; and

(h) perform such other duties as may be required by federal regulations, provided that such federal regulations are not in conflict with this chapter.

(2) Not less than once every 2 years, the department shall make a report through the governor of its activities and findings to the legislature, which shall be made available to the public.

History: **Ap.p. Sec. 2, Ch. 149, L. 1941; amd. Sec. 2, Ch. 183, L. 1957; amd. Sec. 2, Ch. 160, L. 1963; Sec. 41-1202, R.C.M. 1947; Ap.p. Sec. 1, Ch. 149, L. 1941; amd. Sec. 1, Ch. 99, L. 1947; amd. Sec. 1, Ch. 183, L. 1957; amd. Sec. 1, Ch. 160, L. 1963; amd. Sec. 16, Ch. 439, L. 1975;**

Sec. 41-1201, R.C.M. 1947; R.C.M. 1947, 41-1201(b), 41-1202(1) thru (4); amd. Sec. 1, Ch. 272, L. 1979.

39-6-102. Powers of department. (1) The department of labor and industry may accept from the federal government or any agency thereof or from any state agency any funds made available to carry out purposes within the scope of the activities and purposes of the department under this chapter and to use such funds as said department may direct for the purposes for which said funds are made available.

(2) The department may act to bring about the settlement of differences arising out of the apprenticeship agreement where such differences cannot be adjusted locally or in accordance with the established trade procedure.

History: (1)En. Sec. 1, Ch. 149, L. 1941; amd. Sec. 1, Ch. 99, L. 1947; amd. Sec. 1, Ch. 183, L. 1957; amd. Sec. 1, Ch. 160, L. 1963; amd. Sec. 16, Ch. 439, L. 1975; Sec. 41-1201, R.C.M. 1947; (2)En. Sec. 2, Ch. 149, L. 1941; amd. Sec. 2, Ch. 183, L. 1957; amd. Sec. 2, Ch. 160, L. 1963; Sec. 41-1202, R.C.M. 1947; R.C.M. 1947, 41-1201(c), 41-1202(part(5)).

Cross-References

Management of federal funds, Title 17, ch. 3, part 1.

39-6-103. Responsibilities of state and local boards responsible for vocational education. Related and supplemental instruction for apprentices, coordination of instruction with job experiences, and the selection and training of teachers and coordinators for such instruction shall be the responsibility of state and local boards responsible for vocational education.

History: En. Sec. 2, Ch. 149, L. 1941; amd. Sec. 2, Ch. 183, L. 1957; amd. Sec. 2, Ch. 160, L. 1963; R.C.M. 1947, 41-1202(part).

Cross-References

Regulation of vocational education, Title 20, ch. 7, part 3.

39-6-104. Local and state joint apprenticeship committees. (1) Local and state joint apprenticeship committees may be approved in any trade or group of trades in cities or trade areas by the department of labor and industry whenever the apprentice training needs of such trade or group of trades justifies such establishment.

(2) Such local or state joint apprenticeship committees shall be composed of an equal number of employer and employee representatives chosen from names submitted by the respective local or state employer and employee organizations in such trade or group of trades. In a trade or group of trades in which there is no bona fide employer or employee organization, the joint committee shall be composed of persons known to represent the interests of employers and of employees, respectively, or a state joint apprenticeship committee may be approved as or the department may act itself as the joint committee in such trade or group of trades.

(3) Subject to the review of the department and in accordance with the standards established by this chapter and by the department, such committee shall devise standards for apprenticeship agreements and give such aid as may be necessary in their operation in their respective trades and localities.

History: En. Sec. 3, Ch. 149, L. 1941; R.C.M. 1947, 41-1203.

39-6-105. Apprenticeship agreements. (1) For the purpose of this chapter, an apprenticeship agreement is:

(a) an individual written agreement between an employer and apprentice;

(b) a written agreement between an employer or an association of employers and an organization of employees describing conditions of employment for apprentices; or

(c) a written statement describing conditions of employment for apprentices in a plant where there is no bona fide employee organization.

(2) All such agreements shall conform to the basic standards and other provisions of this chapter.

History: **En. Sec. 5, Ch. 149, L. 1941; R.C.M. 1947, 41-1205.**

39-6-106. Contents of apprenticeship agreements — credit for prior training or experience. (1) Apprenticeship agreements shall contain:

(a) a statement of the trade or craft to be taught and the required hours for completion of apprenticeship, which must be not less than 2,000 hours of reasonably continuous employment;

(b) a statement of the processes in the trade or craft divisions in which the apprentice is to be taught and the approximate amount of time to be spent at each process;

(c) a statement of the number of hours to be spent by the apprentice in related and supplemental instruction, which is recommended to be 144 hours per year;

(d) a statement that apprentices must be not less than 16 years of age;

(e) a statement of the progressively increasing scale of wages to be paid the apprentice;

(f) provision for a period of probation during which the department of labor and industry must terminate an apprenticeship agreement at the request in writing of any party thereto. After the probationary period, the department may terminate the registration of an apprentice upon agreement of the parties.

(g) provision that the services of the department may be utilized for consultation regarding the settlement of differences arising out of the apprenticeship agreement where such differences cannot be adjusted locally or in accordance with the established trade procedure;

(h) provision that if an employer is unable to fulfill his obligation under the apprenticeship agreement, he may transfer the obligation to another employer if the other employer has been approved as a training facility;

(i) provision for the specification of the ratio of apprentices to journeymen. The department will continue to honor and recognize ratio provisions as established in existing labor/management bargaining agreements or as established by an industry practice.

(j) such additional standards as may be prescribed in accordance with this chapter.

(2) An apprentice who, prior to entering into an agreement, has had training or experience in the trade or craft in which he is employed as an apprentice may be granted full or partial credit for the training or experience on the recommendation of the employer or the joint apprenticeship committee and with the approval of the department.

History: **En. Sec. 4, Ch. 149, L. 1941; R.C.M. 1947, 41-1204; amd. Sec. 2, Ch. 272, L. 1979; amd. Sec. 30, Ch. 397, L. 1979.**

39-6-107. Provisions of chapter voluntary. The provisions of this chapter shall apply to a person, firm, corporation, or craft only after such person, firm, corporation, or craft has voluntarily elected to conform with its provisions.

History: En. Sec. 6, Ch. 149, L. 1941; R.C.M. 1947, 41-1206.

CHAPTER 7

WOMEN IN EMPLOYMENT
DISPLACED HOMEMAKERS

Part 1 — Duties of Department of Labor and Industry

39-7-101. Legislative policy.
39-7-102. Rules of procedure and practice.
39-7-103. Duties of department.
39-7-104. Department to work in close cooperation with commission on human rights.

Part 2 — Maternity Leave (Repealed and Renumbered. Sec. 2, 3, Ch. 285, L. 1983)

Part 3 — Displaced Homemakers

39-7-301. Short title.
39-7-302. Purpose.
39-7-303. Definitions.
39-7-304. Multipurpose service programs for displaced homemakers — administrators.
39-7-305. Programs to aid displaced homemakers.
39-7-306. Rulemaking duties of commissioner.
39-7-307. Acceptance of funds by administrator of local program.
39-7-308. Evaluation of multipurpose service programs — reports to the commissioner.
39-7-309. Staff of service programs.
39-7-310. Partial funding from local community.

Parts 4 and 5 reserved

Part 6 — Incentive Program—Child Care Assistance

39-7-601. Short title.
39-7-602. Definitions.
39-7-603. Rulemaking authority.
39-7-604. Incentive program — distribution of funds.
39-7-605. Child care assistance — eligibility — costs.
39-7-606. Program evaluation.

Part 1

Duties of Department of Labor and Industry

39-7-101. Legislative policy. This part establishes as an affirmative policy of this state within the department of labor and industry procedures which will enable women to contribute to society according to their fullest possible potential.

History: **En. Sec. 1, Ch. 466, L. 1973; R.C.M. 1947, 41-2401.**

Cross-References

Comparable worth law, 2-18-208, 2-18-209.

Equal pay for equal work, 39-3-104.

Freedom from sex discrimination in employment, 49-1-102, 49-2-303, 49-3-103, 49-3-201 through 49-3-203.

39-7-102. Rules of procedure and practice. The commissioner of the department of labor and industry may issue rules of procedure and practice consistent with the Montana Administrative Procedure Act in order to administer and carry out the purposes of this part.

History: **En. Sec. 3, Ch. 466, L. 1973; R.C.M. 1947, 41-2403.**

Cross-References

Administrative rulemaking procedure, Title 2, ch. 4, parts 1 through 3.

39-7-103. Duties of department. The department of labor and industry shall:

(1) conduct studies about the changing employment needs and problems of women in Montana and make recommendations to the governor and the legislature;

(2) direct public attention to critical employment problems confronting women as wives, mothers, homemakers, and workers;

(3) serve as a clearinghouse for information and materials pertinent to programs and services available to assist and advise women on employment and related matters;

(4) cooperate with governmental departments and agencies primarily involved in curbing job discrimination and in the expansion of employment rights and opportunities available to the women of this state;

(5) conduct periodic conferences throughout the state to make women more aware of employment opportunities, programs, and services available to them;

(6) serve as the central, permanent agency for the coordination and evaluation of employment programs and services for women of the state and as a planning agency for the development of those services;

(7) encourage women's organizations and other groups to institute local self-help activities designed to meet women's employment and related needs;

(8) apply for and receive grants, appropriations, or gifts from any federal, state, or local agency, private foundation, or individual to carry out the purposes of this part.

History: **En. Sec. 2, Ch. 466, L. 1973; R.C.M. 1947, 41-2402.**

39-7-104. Department to work in close cooperation with commission on human rights. It is the intent of the legislature that the functions in the department of labor and industry delineated in this part pertaining to the status of women shall, where appropriate, be performed in close cooperation with the commission on human rights.

History: **En. Sec. 2, Ch. 478, L. 1975.**

Cross-References

Commission for Human Rights, 2-15-1706, Title 49, ch. 2, part 2.

Part 2

Maternity Leave (Repealed and Renumbered. Sec. 2, 3, Ch. 285, L. 1983)

Part Compiler's Comments

Histories of Repealed Sections:

39-7-201. En. 41-2601 by Sec. 1, Ch. 320, L. 1975; R.C.M. 1947, 41-2601.

39-7-202. En. 41-2605 by Sec. 5, Ch. 320, L. 1975; R.C.M. 1947, 41-2605.

39-7-205. En. 41-2603 by Sec. 3, Ch. 320, L. 1975; R.C.M. 1947, 41-2603(part).

39-7-206. En. 41-2604 by Sec. 4, Ch. 320, L. 1975; R.C.M. 1947, 41-2604.

39-7-207. En. 41-2603 by Sec. 3, Ch. 320, L. 1975; R.C.M. 1947, 41-2603(part).

39-7-208. En. 41-2606 by Sec. 6, Ch. 320, L. 1975; R.C.M. 1947, 41-2606.

39-7-209. En. Sec. 1, Ch. 286, L. 1979.

Histories of Renumbered Sections:

39-7-203. Renumbered 49-2-310.

39-7-204. Renumbered 49-2-311.

Part 3

Displaced Homemakers

39-7-301. Short title. This part may be cited as the "Displaced Homemaker Act".

History: En. Sec. 1, Ch. 709, L. 1983.

39-7-302. Purpose. It is the intent of the legislature to provide necessary counseling, training, jobs, services, and health care for displaced homemakers so they may achieve independence and the economic security vital to a productive life.

History: En. Sec. 2, Ch. 709, L. 1983.

Cross-References

Comparable worth law, 2-18-208, 2-18-209.

Equal pay for equal work, 39-3-104.

Freedom from sex discrimination in employment, 49-1-102, 49-2-303, 49-3-103, 49-3-201 through 49-3-203.

39-7-303. Definitions. As used in this part, the following definitions apply:

(1) "Commissioner" means the commissioner of labor and industry as provided in 2-15-1701.

(2) "Displaced homemaker" means an individual who:

(a) has worked in the home for at least 3 years providing unpaid household services for family members;

(b) is not gainfully employed or is underemployed;

(c) has had or would have difficulty securing paid employment; and

(d) was dependent on the income of another family member but is no longer supported by such income, was dependent on federal assistance but is no longer eligible for such assistance, or whose eligibility for such federal assistance will be terminated within 6 months.

History: En. Sec. 3, Ch. 709, L. 1983.

Cross-References

Termination of marriage — support and maintenance, Title 40, ch. 4.

39-7-304. Multipurpose service programs for displaced homemakers — administrators. (1) The commissioner may establish multipurpose service programs for displaced homemakers and may enter into contracts with and make grants to nonprofit agencies or organizations, public or private, to establish, organize, and administer the programs described in 39-7-305.

(2) The commissioner shall contract with an administrator for each program.

History: **En. Sec. 4, Ch. 709, L. 1983.**

39-7-305. Programs to aid displaced homemakers. (1) The programs must be developed in cooperation with federal, state, and local agencies and with private employers in order to coordinate efforts directed toward enabling the displaced homemaker to maintain economic security and emotional well-being and to avoid unnecessary duplication of services.

(2) The services may include but are not limited to:

(a) job counseling services that are:

(i) specifically designed for displaced homemakers by taking into account and building upon their skills and experiences; and

(ii) operated to counsel displaced homemakers with respect to appropriate job opportunities;

(b) job training and job placement services that:

(i) include training and placement programs for jobs in the public and private sectors;

(ii) assist displaced homemakers in gaining admission to existing public or private job training and educational programs; and

(iii) assist in identifying community needs and creating new jobs in the public and private sectors;

(c) referral to or development of programs for displaced homemakers in cooperation with local agencies that provide information and assistance with respect to health care, financial matters, education, nutrition, and legal problems;

(d) support services, such as:

(i) child care for preschool children;

(ii) transportation assistance; and

(iii) grants for education; and

(e) development of outreach programs to serve rural areas where needs for such programs have been identified.

History: **En. Sec. 5, Ch. 709, L. 1983.**

39-7-306. Rulemaking duties of commissioner. The commissioner, with the advice of other organizations and agencies who provide services to displaced homemakers, shall adopt rules:

(1) concerning the eligibility of persons who may be served by the program;

(2) concerning a graduated fee schedule for program services;

(3) concerning criteria for making grants as provided for in 39-7-304; and

(4) necessary to carry out the provisions of this part.

History: **En. Sec. 6, Ch. 709, L. 1983.**

Cross-References

Administrative rulemaking procedure, Title 2, ch. 4, parts 1 through 3.

39-7-307. Acceptance of funds by administrator of local program. The administrator of the local displaced homemaker program may accept, use, and dispose of all grants or contributions of money, services, and property for the purpose of carrying out the provisions of this part. Such grants or contributions may include grants or in-kind contributions from a local governmental unit.

History: **En. Sec. 7, Ch. 709, L. 1983.**

39-7-308. Evaluation of multipurpose service programs — reports to the commissioner. The administrator of each designated program established under this part shall report annually to the commissioner as prescribed by rule, which report must include:

(1) an evaluation of the effectiveness of the program's job counseling, training, placement referral, support, and outreach services to displaced homemakers; and

(2) an accounting of all expenditures.

History: **En. Sec. 8, Ch. 709, L. 1983.**

39-7-309. Staff of service programs. To the extent possible, supervisory, technical, and administrative positions in the multipurpose service programs must be filled by displaced homemakers.

History: **En. Sec. 9, Ch. 709, L. 1983.**

39-7-310. Partial funding from local community. Fifteen percent of the operational costs of a local displaced homemaker program must come from the local community served by the program. The local contribution may include in-kind contributions.

History: **En. Sec. 10, Ch. 709, L. 1983.**

Parts 4 and 5 reserved

Part 6

Incentive Program — Child Care Assistance

39-7-601. Short title. This part may be cited as the "New Horizons Act".

History: **En. Sec. 1, Ch. 579, L. 1987.**

39-7-602. Definitions. In this part the following definitions apply:

(1) "AFDC" means the aid to families with dependent children program provided for in Title 53, chapter 4, part 2.

(2) "Department" means the department of labor and industry provided for in 2-15-1701.

History: **En. Sec. 3, Ch. 579, L. 1987.**

39-7-603. *(Temporary)* **Rulemaking authority.** The department shall adopt rules necessary for administering the incentive program provided for in

39-7-604 and the child care assistance provided for in 39-7-605. The rules must establish methods for:

(1) selecting the operators of the displaced homemaker program who may participate in the incentive program described in 39-7-604;

(2) selecting the displaced homemaker programs whose clients may receive child care assistance under 39-7-605;

(3) determining eligibility for child care assistance under 39-7-605;

(4) determining the employment status of AFDC recipients and former AFDC recipients as required by 39-7-606;

(5) coordinating the child care assistance program with other programs intended to assist AFDC recipients to obtain and retain employment; and

(6) evaluating the effect of the incentive program and child care assistance on the employment and continued employment of former AFDC recipients. *(Terminates July 1, 1990—sec. 7, Ch. 251, L. 1989.)*

39-7-603. *(Effective July 1, 1990)* **Rulemaking authority.** The department shall adopt rules necessary for administering the incentive program provided for in 39-7-604 and the child care assistance provided for in 39-7-605. The rules must establish methods for:

(1) selecting the operators of the displaced homemaker program who may participate in the pilot cash incentive program described in 39-7-604;

(2) selecting the displaced homemaker programs whose clients may receive child care assistance under 39-7-605;

(3) determining eligibility for child care assistance under 39-7-605;

(4) determining the employment status of former AFDC recipients as required by 39-7-606;

(5) coordinating the child care assistance program with other programs intended to assist AFDC recipients to obtain and retain employment; and

(6) evaluating the effect of the incentive program and child care assistance on the employment and continued employment of former AFDC recipients.

History: En. Sec. 7, Ch. 579, L. 1987; amd. Sec. 1, Ch. 251, L. 1989.

Compiler's Comments

1989 Amendment: In (1), before "incentive program", deleted "pilot cash"; and in (4), before "former AFDC recipients", inserted "AFDC recipients and". Amendment effective July 1, 1989, and terminates July 1, 1990.

39-7-604. *(Temporary)* **Incentive program — distribution of funds.** At the beginning of each fiscal year, the department shall distribute funds to selected operators of the displaced homemaker program as incentive awards to assist AFDC recipients and former AFDC recipients in obtaining and retaining gainful employment. These funds must be used for program enhancement, staff training, or client services. *(Terminates July 1, 1990—sec. 7, Ch. 251, L. 1989.)*

39-7-604. *(Effective July 1, 1990)* **Incentive program.** (1) During the biennium ending on June 30, 1989, the department shall pay to selected operators of the displaced homemaker program a $350 cash bonus for each client who received AFDC benefits for at least 9 consecutive months before entering employment and who has completed at least 6 consecutive months of gainful employment.

(2) A program operator whose client qualified him for a cash bonus under subsection (1) shall receive a second $350 cash bonus after the same client has completed 1 year of gainful employment.

History: **En. Sec. 4, Ch. 579, L. 1987; amd. Sec. 2, Ch. 251, L. 1989.**

Compiler's Comments

1989 Amendment: At beginning substituted "At the beginning of each fiscal year" for "During the biennium ending on June 30, 1989"; after "department shall" substituted "distribute funds" for "pay"; after "homemaker program" substituted language relating to incentive awards for "a $350 cash bonus for each client who received AFDC benefits for at least 9 consecutive months before entering employment and who has completed at least 6 consecutive months of gainful employment"; and deleted former (2) that provided a second bonus of $350 to program operators when their client completed 1 year of gainful employment. Amendment effective July 1, 1989, and terminates July 1, 1990.

39-7-605. *(Temporary)* **Child care assistance — eligibility — costs.** (1) The department shall provide child care assistance to persons enrolled in selected displaced homemaker programs for the purpose of helping them:

(a) obtain or retain gainful employment; or

(b) receive classroom training that will enable them to obtain or retain employment.

(2) Eligibility for assistance under subsection (1) is limited to persons who have received AFDC in the past 36 months and who:

(a) are employed; or

(b) are receiving both AFDC and classroom training.

(3) Assistance under subsection (1) must be provided on an as-needed basis for no longer than 12 months and may not exceed $50 per week per child during the first 6 months, with the amount of assistance gradually decreasing over the remaining 6-month period.

(4) Administrative costs paid to subcontractors may not exceed 10% of the money provided for child care assistance and may be used for:

(a) any direct and indirect costs associated with management and supervision of the displaced homemaker program; and

(b) follow-up activities conducted for the program evaluation required by 39-7-606. *(Terminates July 1, 1990—sec. 7, Ch. 251, L. 1989.)*

39-7-605. *(Effective July 1, 1990)* **Child care assistance — eligibility — costs.** (1) For the purpose of assisting AFDC recipients to obtain or retain gainful employment, the department shall provide child care assistance during the biennium ending June 30, 1989, to persons enrolled in selected displaced homemaker programs.

(2) Eligibility for assistance under subsection (1) is limited to persons who have received AFDC for at least 9 months and currently are not eligible for AFDC but would be eligible if they were not gainfully employed.

(3) Assistance under subsection (1) must be provided on an as-needed basis for no longer than the first 6 months of employment and may not exceed $200 a month per child.

(4) Administrative costs paid to subcontractors may not exceed 10% of the money provided for child care assistance and must be used exclusively for follow-up activities conducted for the program evaluation required by 39-7-606.

History: **En. Sec. 5, Ch. 579, L. 1987; amd. Sec. 3, Ch. 251, L. 1989.**

Compiler's Comments

1989 Amendment: At beginning of (1) deleted "For the purpose of assisting AFDC recipients to obtain or retain gainful employment", in middle, after "assistance", deleted "during the biennium ending June 30, 1989", and at end inserted "for the purpose of helping them"; inserted (1)(a) and (1)(b) relating to gainful employment and classroom training; at end of (2) substituted "in the past 36 months and who" for "for at least 9 months and currently are not eligible for AFDC but would be eligible if they were not gainfully employed"; inserted (2)(a) and (2)(b) relating to eligibility; in (3) substituted "12 months" for "the first 6 months of employment", substituted "$50 per week" for "$200 a month", and at end inserted "during the first 6 months, with the amount of assistance gradually decreasing over the remaining 6-month period"; near end of (4) substituted "may" for "must" and after "used" deleted "exclusively"; inserted (4)(a) relating to costs of displaced homemaker program; and made minor change in form. Amendment effective July 1, 1989, and terminates July 1, 1990.

39-7-606. *(Temporary)* **Program evaluation.** (1) The department shall evaluate the extent to which the incentive program and the child care assistance described in 39-7-604 and 39-7-605 increase:

(a) the number of AFDC recipients who obtain gainful employment; and

(b) the number of former AFDC recipients who continue to be gainfully employed for at least 6 months.

(2) Program evaluation must include a determination, at 6 months from the beginning of employment, of the employment status of each person who:

(a) is served under the incentive program provided in 39-7-604; or

(b) receives child care assistance under 39-7-605. *(Terminates July 1, 1990—sec. 7, Ch. 251, L. 1989.)*

39-7-606. *(Effective July 1, 1990)* **Program evaluation.** (1) The department shall evaluate the extent to which the incentive program and the child care assistance described in 39-7-604 and 39-7-605 increase:

(a) the number of AFDC recipients who obtain gainful employment; and

(b) the number of former AFDC recipients who continue to be gainfully employed for at least 6 months.

(2) Program evaluation must include a determination, every 6 months from the beginning of employment until June 30, 1989, of the employment status of each person who qualifies a program operator for a cash bonus under 39-7-604 or who receives child care assistance under 39-7-605.

History: En. Sec. 6, Ch. 579, L. 1987; amd. Sec. 4, Ch. 251, L. 1989.

Compiler's Comments

1989 Amendment: In (2), before "6 months", substituted "at" for "every", after "beginning of employment" deleted "until June 30, 1989", and at end, after "person who", substituted (2)(a) regarding incentive program for "qualifies a program operator for a cash bonus under 39-7-604"; and made minor changes in style and form. Amendment effective July 1, 1989, and terminates July 1, 1990.

CHAPTERS 8 THROUGH 28

RESERVED

CHAPTER 29

VETERANS' PUBLIC EMPLOYMENT PREFERENCE

Part 1 — General Provisions

39-29-101. Definitions.
39-29-102. Point preference in initial hiring for certain applicants.
39-29-103. Notice and claim of preference.

39-29-104. Enforcement of preference.
39-29-105 through 39-29-110 reserved.
39-29-111. Retention during reduction in force.
39-29-112. Adoption of rules.

Chapter Cross-References

Legislative grants of special considerations to veterans, Art. II, sec. 35, Mont. Const.

Reemployment of veteran on completion of service, Title 10, ch. 2, part 2.

Part 1

General Provisions

39-29-101. *(Temporary)* **Definitions.** For the purposes of this chapter, the following definitions apply:

(1) "Active duty" means full-time duty with military pay and allowances in the armed forces, except for training, determining physical fitness, or service in the reserve or national guard.

(2) "Armed forces" means the United States:

(a) army, navy, air force, marine corps, and coast guard; and

(b) merchant marine for service recognized by the United States department of defense as active military service for the purpose of laws administered by the veterans administration.

(3) "Disabled veteran" means a person:

(a) whether or not he is a veteran as defined in this section, who was separated under honorable conditions from active duty in the armed forces and has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pension because of a law administered by the veterans administration or a military department; or

(b) who has received a purple heart medal.

(4) "Eligible relative" means:

(a) the unmarried surviving spouse of a veteran or disabled veteran;

(b) the spouse of a disabled veteran who is unable to qualify for appointment to a position;

(c) the mother of a veteran who lost his life under honorable conditions while serving in the armed forces if:

(i) her husband is totally and permanently disabled; or

(ii) she is the widow of the father of the veteran and has not remarried;

(d) the mother of a service-connected permanently and totally disabled veteran if:

(i) her husband is totally and permanently disabled; or

(ii) she is the widow of the father of the veteran and has not remarried.

(5) "Position" means a permanent, temporary, or seasonal position as defined in 2-18-101 for a state position or a similar permanent, temporary, or seasonal position with a public employer other than the state. The term does not include:

(a) a state or local elected office;

(b) appointment by an elected official to a body such as a board, commission, committee, or council;

(c) appointment by an elected official to a public office if the appointment is provided for by law;

(d) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local government; or

(e) engagement as an independent contractor or employment by an independent contractor.

(6) "Public employer" means:

(a) a department, office, board, bureau, commission, agency, or other instrumentality of the executive, legislative, or judicial branches of the government of this state;

(b) a unit of the Montana university system or a vocational-technical center;

(c) a school district or community college; and

(d) a county, city, or town.

(7) "Scored procedure" means a written test, structured oral interview, performance test, or other selection procedure or a combination of these procedures that result in a numerical score to which percentage points may be added.

(8) "Under honorable conditions" means a discharge or separation from active duty characterized by the armed forces as under honorable conditions. The term includes honorable discharges and general discharges but does not include dishonorable discharges or other administrative discharges characterized as other than honorable.

(9) "Veteran" means a person who was separated under honorable conditions from active duty in the armed forces after having served more than 180 consecutive days, other than for training. *(Terminates July 1, 1991—sec. 19, Ch. 646, L. 1989.)*

History: En. Sec. 1, Ch. 646, L. 1989.

39-29-102. *(Temporary)* **Point preference in initial hiring for certain applicants.** (1) Subject to the restrictions in subsections (2) and (3), whenever a public employer uses a scored procedure, an applicant for an initial hiring, as defined in 39-30-103, must have added to his score the following percentage points of the total possible points that may be granted in the scored procedure:

(a) 5 percentage points if the applicant is a veteran; and

(b) 10 percentage points if the applicant is a disabled veteran or an eligible relative.

(2) A veteran, disabled veteran, or eligible relative may not receive the percentage points provided for in subsection (1) unless the person:

(a) is a United States citizen; and

(b) received 70 or more percentage points of the total possible points that may be granted in the scored procedure.

(3) A disabled veteran who receives 10 percentage points under subsection (1)(b) may not receive an additional 5 percentage points under subsection (1)(a). *(Terminates July 1, 1991—sec. 19, Ch. 646, L. 1989.)*

History: En. Sec. 2, Ch. 646, L. 1989.

39-29-103. *(Temporary)* **Notice and claim of preference.** (1) A public employer shall, by posting or on the application form, give notice of the point preference provided in 39-29-102.

(2) A job applicant who believes he is eligible to receive a point preference shall claim the preference in writing before the time for filing applications for the position involved has passed. Failure to make a timely preference claim for a position is a complete defense to an action instituted by an applicant under 39-29-104 with regard to that position.

(3) If an applicant for a position makes a timely written preference claim, the public employer shall give written notice of its hiring decision to the applicant claiming preference. *(Terminates July 1, 1991—sec. 19, Ch. 646, L. 1989.)*

History: En. Sec. 3, Ch. 646, L. 1989.

39-29-104. *(Temporary)* **Enforcement of preference.** (1) An applicant who believes he is entitled to but has not been given the point preference provided in 39-29-102 may, within 30 days of receipt of the notice of the hiring decision provided for in 39-29-103, submit to the public employer a written request for an explanation of the public employer's hiring decision. Within 15 days of receipt of the request, the public employer shall give the applicant a written explanation.

(2) After following the procedure described in subsection (1), the applicant may, within 90 days after receipt of notice of the hiring decision, file a petition in the district court in the county in which his application was received by the public employer. The petition must state facts that on their face entitle the applicant to a point preference.

(3) (a) Upon filing of the petition, the court shall order the public employer to appear in court at a specified time not less than 5 or more than 10 days after the day the petition was filed and show cause why the applicant was not hired for the position. At the hearing, the public employer has the burden of proving by a preponderance of the evidence that the employer applied the points under 39-29-102 and made a reasonable hiring decision. The applicant has the burden of proving by a preponderance of the evidence that he is a preference eligible applicant.

(b) The time to appear provided in subsection (3)(a) may be waived by stipulation of the parties. If a time to appear has been specified pursuant to subsection (3)(a), the court may, on motion of one of the parties or on stipulation of all of the parties, grant a continuance.

(c) If the public employer does not carry its burden of proof under subsection (3)(a) and the court finds that the applicant is a preference eligible applicant, the court shall order the public employer to comply with the provisions of 39-29-102. In addition, the court shall, upon proper proof, grant an award of backpay, reasonable attorney fees, and costs.

(4) Failure of an applicant to file a petition under subsection (2) within 90 days bars the filing of a petition. If a public employer fails to provide an explanation under subsection (1) within 15 days and a petition is filed under subsection (2), the court shall order the public employer to comply with the provisions of 39-29-102.

(5) The Montana Rules of Civil Procedure apply to a proceeding under this section to the extent that they do not conflict with this section. *(Terminates July 1, 1991—sec. 19, Ch. 646, L. 1989.)*

History: En. Sec. 4, Ch. 646, L. 1989.

39-29-105 through 39-29-110 reserved.

39-29-111. *(Temporary)* **Retention during reduction in force.** (1) Subject to the restriction in subsections (2) and (3), during a reduction in force, a public employer shall retain in a position:

(a) a veteran, disabled veteran, or eligible relative whose performance has not been rated unacceptable under a performance appraisal system over other employees with similar job duties and qualifications and same length of service; and

(b) a disabled veteran with a service-connected disability of 30% or more whose performance has not been rated unacceptable under a performance appraisal system over other veterans, disabled veterans, and eligible relatives with similar job duties and qualifications and same length of service.

(2) An employee is not entitled to preference in retention under subsection (1) unless he is a United States citizen.

(3) The preference in retention under subsection (1) does not apply to a position covered by a collective bargaining agreement. *(Terminates July 1, 1991—sec. 19, Ch. 646, L. 1989.)*

History: En. Sec. 5, Ch. 646, L. 1989.

39-29-112. *(Temporary)* **Adoption of rules.** The department of administration shall adopt rules implementing this chapter. The department's rules apply to all local and state public employers. *(Terminates July 1, 1991—sec. 19, Ch. 646, L. 1989.)*

History: En. Sec. 6, Ch. 646, L. 1989.

CHAPTER 30

HANDICAPPED PERSONS' PUBLIC EMPLOYMENT PREFERENCE

Part 1 — General Provisions

39-30-101. Short title.
39-30-102. Purposes.
39-30-103. Definitions.
39-30-104 and 39-30-105 reserved.
39-30-106. Adoption of rules.
39-30-107. Certification of handicapped persons.
39-30-108. No application if conflict with federal law.

Part 2 — Operative Provisions

39-30-201. Employment preference in initial hiring.
39-30-202. Eligibility requirements.
39-30-203. Duration of preference.
39-30-204 and 39-30-205 reserved.

39-30-206. Notice and claim of preference.
39-30-207. Enforcement of preference.

Part 1

General Provisions

39-30-101. *(Temporary)* **Short title.** This chapter may be cited as the "Montana Handicapped Persons' Employment Preference Act". *(Terminates July 1, 1991—sec. 19, Ch. 646, L. 1989.)*

39-30-101. *(Effective July 1, 1991)* **Short title.** This chapter may be cited as the "Montana Veterans' and Handicapped Persons' Employment Preference Act".

History: **En. Sec. 1, Ch. 1, Sp. L. 1983; amd. Sec. 8, Ch. 646, L. 1989.**

Compiler's Comments

1989 Amendment: After "Montana" deleted "Veterans' and". Amendment terminates July 1, 1991.

39-30-102. *(Temporary)* **Purposes.** The purposes of this chapter are to recognize past employment discrimination against handicapped persons and facilitate the habilitation, rehabilitation, and readjustment of handicapped persons. *(Terminates July 1, 1991—sec. 19, Ch. 646, L. 1989.)*

39-30-102. *(Effective July 1, 1991)* **Purposes.** The purposes of this chapter are to recognize veterans and disabled veterans for service to their country, recognize past employment discrimination against handicapped persons, and facilitate the habilitation, rehabilitation, and readjustment of veterans, disabled veterans, and handicapped persons.

History: **En. Sec. 2, Ch. 1, Sp. L. 1983; amd. Sec. 9, Ch. 646, L. 1989.**

Compiler's Comments

1989 Amendment: After "this chapter are to" deleted "recognize veterans and disabled veterans for service to their country"; near end, after "readjustment of", deleted "veterans, disabled veterans, and"; and made minor change in punctuation. Amendment terminates July 1, 1991.

39-30-103. *(Temporary)* **Definitions.** For the purposes of this chapter, the following definitions apply:

(1) "Eligible spouse" means the spouse of a handicapped person determined by the department of social and rehabilitation services to have a 100% disability who is unable to use his employment preference because of his disability.

(2) "Handicapped person" means an individual certified by the department of social and rehabilitation services to have a physical or mental impairment that substantially limits one or more major life activities, such as writing, seeing, hearing, speaking, or mobility, and that limits the individual's ability to obtain, retain, or advance in employment.

(3) (a) "Initial hiring" means a personnel action for which applications are solicited from outside the ranks of the current employees of:

(i) a department, as defined in 2-15-102, for a position within the executive branch;

(ii) a legislative agency, such as the consumer counsel, environmental quality council, office of the legislative auditor, legislative council, or office of the legislative fiscal analyst, for a position within the legislative branch;

(iii) a judicial agency, such as the office of supreme court administrator, office of supreme court clerk, state law library, or similar office in a state district court for a position within the judicial branch;

(iv) a city or town for a municipal position, including a city or municipal court position; and

(v) a county for a county position, including a justice's court position.

(b) A personnel action limited to current employees of a specific public entity identified in subsections (a)(i) through (a)(v) of this subsection (3), current employees in a reduction-in-force pool who have been laid off from a specific public entity identified in subsections (a)(i) through (a)(v) of this subsection (3), or current participants in a federally authorized employment program is not an initial hiring.

(4) (a) "Mental impairment" means:

(i) suffering from a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically handicapping condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals; or

(ii) an organic or mental impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(b) The term mental impairment does not include alcoholism or drug addiction and does not include any mental impairment, disease, or defect that has been asserted by the individual claiming the preference as a defense to any criminal charge.

(5) "Position" means a permanent or seasonal position as defined in 2-18-101 for a state position or a similar permanent or seasonal position with a public employer other than the state. However, the term does not include:

(a) a temporary position as defined in 2-18-101 for a state position or similar temporary position with a public employer other than the state;

(b) a state or local elected official;

(c) employment as an elected official's immediate secretary, legal advisor, court reporter, or administrative, legislative, or other immediate or first-line aide;

(d) appointment by an elected official to a body such as a board, commission, committee, or council;

(e) appointment by an elected official to a public office if the appointment is provided for by law;

(f) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local government; or

(g) engagement as an independent contractor or employment by an independent contractor.

(6) (a) "Public employer" means:

(i) any department, office, board, bureau, commission, agency, or other instrumentality of the executive, judicial, or legislative branch of the government of the state of Montana; and

(ii) any county, city, or town.

(b) The term does not include a school district, a vocational-technical center or program, a community college, the board of regents of higher education, the Montana university system, a special purpose district, an authority, or any political subdivision of the state other than a county, city, or town.

(7) "Substantially equal qualifications" means the qualifications of two or more persons among whom the public employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons. *(Terminates July 1, 1991—sec. 19, Ch. 646, L. 1989.)*

39-30-103. *(Effective July 1, 1991)* **Definitions.** For the purposes of this chapter, the following definitions apply:

(1) "Active duty" means full-time duty other than for training in the regular components of the United States army, air force, navy, marine corps, or coast guard with full pay and allowances. The term does not include monthly drills, summer encampments, initial training, or other inactive or active duty for training in the national guard or reserves.

(2) "Disabled veteran" means an individual, whether or not he is a veteran as defined in this section, who:

(a) served on active duty;

(b) has been separated from service by honorable discharge; and

(c) suffers a service-connected disability determined by the United States veterans administration to be 30% or more disabling.

(3) "Eligible spouse" means:

(a) the unremarried surviving spouse of a veteran who died while on active duty or whose death resulted from a service-connected disability; or

(b) the spouse of:

(i) a disabled veteran determined by the United States veterans administration to have a 100% service-connected disability who is unable to use his employment preference because of his disability;

(ii) a person on active duty determined by the United States government to be missing in action or a prisoner of war; or

(iii) a handicapped person determined by the department of social and rehabilitation services to have a 100% disability who is unable to use his employment preference because of his disability.

(4) "Handicapped person" means an individual certified by the department of social and rehabilitation services to have a physical or mental impairment that substantially limits one or more major life activities, such as writing, seeing, hearing, speaking, or mobility, and which limits the individual's ability to obtain, retain, or advance in employment.

(5) (a) "Initial hiring" means a personnel action for which applications are solicited from outside the ranks of the current employees of:

(i) a department, as defined in 2-15-102, for a position within the executive branch;

(ii) a legislative agency, such as the consumer counsel, environmental quality council, office of the legislative auditor, legislative council, or office of the legislative fiscal analyst, for a position within the legislative branch;

(iii) a judicial agency, such as the office of supreme court administrator, office of supreme court clerk, state law library, or similar office in a state district court for a position within the judicial branch;

(iv) a city or town for a municipal position, including a city or municipal court position; and

(v) a county for a county position, including a justice's court position.

(b) A personnel action limited to current employees of a specific public entity identified in subsections (a)(i) through (a)(v) of this subsection (5), current employees in a reduction-in-force pool who have been laid off from a specific public entity identified in subsections (a)(i) through (a)(v) of this subsection (5), or current participants in a federally authorized employment program is not an initial hiring.

(6) (a) "Mental impairment" means:

(i) suffering from a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically handicapping condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals; or

(ii) an organic or mental impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(b) The term mental impairment does not include alcoholism or drug addiction and does not include any mental impairment, disease, or defect that has been asserted by the individual claiming the preference as a defense to any criminal charge.

(7) "Position" means a permanent or seasonal position as defined in 2-18-101 for a state position or a similar permanent or seasonal position with a public employer other than the state. However, the term does not include:

(a) a temporary position as defined in 2-18-101 for a state position or similar temporary position with a public employer other than the state;

(b) a state or local elected official;

(c) employment as an elected official's immediate secretary, legal advisor, court reporter, or administrative, legislative, or other immediate or first-line aide;

(d) appointment by an elected official to a body such as a board, commission, committee, or council;

(e) appointment by an elected official to a public office if the appointment is provided for by law;

(f) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, or other chief administrative or executive officer of a local government; or

(g) engagement as an independent contractor or employment by an independent contractor.

(8) (a) "Public employer" means:

(i) any department, office, board, bureau, commission, agency, or other instrumentality of the executive, judicial, or legislative branch of the government of the state of Montana; and

(ii) any county, city, or town.

(b) The term does not include a school district, a vocational-technical center or program, a community college, the board of regents of higher education, the Montana university system, a special purpose district, an authority, or any political subdivision of the state other than a county, city, or town.

(9) "Substantially equal qualifications" means the qualifications of two or more persons among whom the public employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons.

(10) (a) "Veteran" means a person who:

(i) served on active duty during time of war or declared national emergency or in a campaign or expedition for which a campaign badge was authorized by the United States congress or the United States department of defense; and

(ii) has been separated from service by honorable discharge.

(b) The term does not include a retired member of the United States armed forces who is eligible for or receiving a military retirement allowance based on length of service and does not include any other retired member of a public retirement system, except social security, that is supported in whole or in part by tax revenues.

(11) "War or declared national emergency" means:

(a) World War I, beginning on April 6, 1917, and ending on November 11, 1918, both dates inclusive;

(b) World War II, beginning on December 7, 1941, and ending on December 31, 1946, both dates inclusive;

(c) the Korean conflict, military expedition, or police action, beginning on June 27, 1950, and ending on January 31, 1955, both dates inclusive; and

(d) the Vietnam conflict, beginning on August 5, 1964, and ending on May 7, 1975, both dates inclusive.

History: En. Sec. 3, Ch. 1, Sp. L. 1983; amd. Sec. 34, Ch. 658, L. 1987; amd. Sec. 10, Ch. 646, L. 1989.

Compiler's Comments

1989 Amendment: Deleted definitions of active duty, disabled veteran, veteran, and war or declared national emergency; in definition of eligible spouse deleted (a) that read: "(a) the unremarried surviving spouse of a veteran who died while on active duty or whose death resulted from a service-connected disability" and after "the spouse of" deleted former (b)(i) and (b)(ii) that read: "(i) a disabled veteran determined by the United States veterans administration to have a 100% service-connected disability who is unable to use his employment preference because of his disability; (ii) a person on active duty determined by the United States government to be missing in action or a prisoner of war"; corrected internal references; and made minor changes in form and phraseology. Amendment terminates July 1, 1991.

Cross-References

Judiciary, Title 3.

Legislative Branch, Title 5.

"Developmentally disabled" defined similarly to "mental impairment", 53-20-102.

39-30-104 and 39-30-105 reserved.

39-30-106. Adoption of rules. The department of administration shall adopt rules implementing this chapter and shall consult with the department of social and rehabilitation services in adopting rules governing certification of handicapped persons for purposes of this chapter. The department of administration's rules apply to all public employers, local as well as state.

History: En. Sec. 9, Ch. 1, Sp. L. 1983.

Cross-References

Administrative rulemaking, Title 2, ch. 4, part 3.

39-30-107. Certification of handicapped persons. The department of social and rehabilitation services shall certify persons as handicapped for the purpose of employment preference as provided in this chapter.

History: **En. Sec. 6, Ch. 1, Sp. L. 1983.**

39-30-108. No application if conflict with federal law. This chapter does not apply to work or positions subject to federal laws or regulations if application of the employment preference conflicts with those laws or regulations.

History: **En. Sec. 10, Ch. 1, Sp. L. 1983.**

Cross-References

Supremacy clause, Art. VI, U.S. Const. (Federal Materials, MCA Annotations, Vol. 1).

Part 2

Operative Provisions

39-30-201. *(Temporary)* **Employment preference in initial hiring.** (1) (a) Except as provided in 10-2-402, in an initial hiring for a position, if a job applicant who is a handicapped person or eligible spouse meets the eligibility requirements contained in 39-30-202 and claims a preference as required by 39-30-206, a public employer shall hire the applicant over any other applicant with substantially equal qualifications who is not a preference eligible applicant.

(b) In an initial hiring, a public employer shall hire a handicapped person over any other preference eligible applicant with substantially equal qualifications.

(2) The employment preference provided for in subsection (1) does not apply to a personnel action described in 39-30-103(3)(b) or to any other personnel action that is not an initial hiring. *(Terminates July 1, 1991—sec. 19, Ch. 646, L. 1989.)*

39-30-201. *(Effective July 1, 1991)* **Employment preference in initial hiring.** (1) (a) Except as provided in 10-2-402, in an initial hiring for a position, if a job applicant who is a veteran, disabled veteran, handicapped person, or eligible spouse meets the eligibility requirements contained in 39-30-202 and claims a preference as required by 39-30-206, a public employer shall hire the applicant over any other applicant with substantially equal qualifications who is not a preference eligible applicant.

(b) In an initial hiring, a public employer shall hire a disabled veteran or handicapped person over any other preference eligible applicant with substantially equal qualifications.

(2) The employment preference provided for in subsection (1) does not apply to a personnel action described in subsection (5)(b) of 39-30-103 or to any other personnel action that is not an initial hiring.

History: **En. Sec. 4, Ch. 1, Sp. L. 1983; amd. Sec. 11, Ch. 646, L. 1989.**

Compiler's Comments

1989 Amendment: In (1)(a), before "handicapped person", deleted "veteran, disabled veteran"; in (1)(b), before "handicapped person", deleted "disabled veteran or"; and in (2) substituted reference to 39-30-103(3)(b) for reference to 39-30-103(5)(b). Amendment terminates July 1, 1991.

Cross-References

Preference of Montana labor in public works, 18-2-403.

Management rights of public employers, 39-31-303.

Employment preference no violation of antidiscrimination laws, 49-2-405, 49-3-103.

39-30-202. *(Temporary)* **Eligibility requirements.** An eligible spouse or handicapped person is not entitled to receive employment preference as provided in 39-30-201 unless:

(1) he is a United States citizen;

(2) he has resided continuously in the state for at least 1 year immediately before applying for employment;

(3) if applying for municipal or county employment, he has resided for at least 30 days immediately before applying for employment in the city, town, or county in which employment is sought; and

(4) he meets those requirements considered necessary by a public employer to successfully perform the essential duties of the position for which he is applying. *(Terminates July 1, 1991—sec. 19, Ch. 646, L. 1989.)*

39-30-202. *(Effective July 1, 1991)* **Eligibility requirements.** No veteran, disabled veteran, eligible spouse, or handicapped person is entitled to receive employment preference as provided in 39-30-201 unless:

(1) he is a United States citizen;

(2) he has resided continuously in the state for at least 1 year immediately before applying for employment;

(3) if applying for municipal or county employment, he has resided for at least 30 days immediately before applying for employment in the city, town, or county in which employment is sought; and

(4) he meets those requirements considered necessary by a public employer to successfully perform the essential duties of the position for which he is applying.

History: **En. Sec. 5, Ch. 1, Sp. L. 1983; amd. Sec. 12, Ch. 646, L. 1989.**

Compiler's Comments

1989 Amendment: At beginning deleted "No veteran, disabled veteran"; and made minor changes in phraseology. Amendment terminates July 1, 1991.

Cross-References

Rules for determining residence, 1-1-215.

39-30-203. *(Temporary)* **Duration of preference.** Subject to 39-30-202, a handicapped person or eligible spouse qualifies for employment preference as long as the disabling condition exists. *(Terminates July 1, 1991—sec. 19, Ch. 646, L. 1989.)*

39-30-203. *(Effective July 1, 1991)* **Duration of preference.** Subject to 39-30-202:

(1) a handicapped person, the spouse of a handicapped person as described in subsection (3)(b)(iii) of 39-30-103, a disabled veteran, or the spouse of a disabled veteran as described in subsection (3)(b)(i) of 39-30-103 qualifies for employment preference as long as the disabling condition exists;

(2) a veteran, as defined in 39-30-103, who is not a disabled veteran, as defined in 39-30-103, qualifies for employment preference for no longer than

15 years following separation from service or for no longer than 5 years following December 20, 1983, whichever is later.

(3) the surviving spouse of a veteran as described in subsection (3)(a) of 39-30-103 qualifies for employment preference for as long as the spouse remains unmarried; and

(4) the spouse of a person described in subsection (3)(b)(ii) of 39-30-103 qualifies for employment preference for as long as the person is missing in action or a prisoner of war.

History: En. Sec. 7, Ch. 1, Sp. L. 1983; amd. Sec. 13, Ch. 646, L. 1989.

Compiler's Comments

1989 Amendment: Near beginning inserted "or eligible"; after "spouse" deleted "of a handicapped person as described in subsection (3)(b)(iii) of 39-30-103, a disabled veteran, or the spouse of a disabled veteran as described in subsection (3)(b)(i) of 39-30-103"; deleted former (2), (3), and (4) that read: "(2) a veteran, as defined in 39-30-103, who is not a disabled veteran, as defined in 39-30-103, qualifies for employment preference for no longer than 15 years following separation from service or for no longer than 5 years following December 20, 1983, whichever is later.

(3) the surviving spouse of a veteran as described in subsection (3)(a) of 39-30-103 qualifies for employment preference for as long as the spouse remains unmarried; and

(4) the spouse of a person described in subsection (3)(b)(ii) of 39-30-103 qualifies for employment preference for as long as the person is missing in action or a prisoner of war"; and made minor changes in punctuation and form. Amendment terminates July 1, 1991.

39-30-204 and 39-30-205 reserved.

39-30-206. Notice and claim of preference. (1) A public employer shall, by posting or on the application form, give notice of the preferences that this chapter provides in public employment.

(2) A job applicant who believes he has an employment preference shall claim the preference in writing before the time for filing applications for the position involved has passed. Failure to make a timely employment preference claim for a position is a complete defense to an action in regard to that position under 39-30-207.

(3) If an applicant for a position makes a timely written employment preference claim, the public employer shall give written notice of its hiring decision to each applicant claiming preference.

History: En. Sec. 8(1)-(3), Ch. 1, Sp. L. 1983.

39-30-207. *(Temporary)* **Enforcement of preference.** (1) An applicant who believes he has not been accorded his rights under this chapter may, within 30 days of receipt of the notice of the hiring decision provided for in 39-30-206, submit to the public employer a written request for an explanation of the public employer's hiring decision. Within 15 days of receipt of the request, the public employer shall give the applicant a written explanation.

(2) The applicant may, within 90 days after receipt of notice of the hiring decision, file a petition in the district court in the county in which his application was received by the public employer. The petition must state facts that on their face entitle the applicant to an employment preference.

(3) (a) Upon filing of the petition, the court shall order the public employer to appear in court at a specified time not less than 10 or more than 30 days after the day the petition was filed and show cause why the applicant was not hired for the position. At the hearing, the public employer has the

burden of proving by a preponderance of the evidence that the employer made a reasonable determination pursuant to 39-30-103(7), and the applicant has the burden of proving by a preponderance of the evidence that he is a preference eligible applicant.

(b) The time to appear provided in subsection (3)(a) may be waived by stipulation of the parties. If a time to appear has been specified pursuant to subsection (3)(a), the court may, on motion of one of the parties or on stipulation of all of the parties, grant a continuance.

(c) If the public employer does not carry its burden of proof under subsection (3)(a) and the court finds that the applicant is a preference eligible applicant, the court shall order the public employer to reopen the selection process for the position involved and shall grant the applicant reasonable attorney fees and court costs. The remedy provided by this section is the only remedy for a violation of this chapter, and a court may not grant any other relief in an action for violation of this chapter.

(4) Failure of an applicant to file a petition under subsection (2) within 90 days bars the filing of a petition. If a public employer fails to provide an explanation under subsection (1) within 15 days and a petition is filed under subsection (2), the court shall order the public employer to reopen the selection process.

(5) The Montana Rules of Civil Procedure apply to a proceeding under this section to the extent that they do not conflict with this section. *(Terminates July 1, 1991—sec. 19, Ch. 646, L. 1989.)*

39-30-207. *(Effective July 1, 1991)* **Enforcement of preference.** (1) An applicant who believes he has not been accorded his rights under this chapter may, within 30 days of receipt of the notice of the hiring decision provided for in 39-30-206, submit to the public employer a written request for an explanation of the public employer's hiring decision. Within 15 days of receipt of the request, the public employer shall give the applicant a written explanation.

(2) The applicant may, within 90 days after receipt of notice of the hiring decision, file a petition in the district court in the county in which his application was received by the public employer. The petition must state facts which on their face entitle the applicant to an employment preference.

(3) (a) Upon filing of the petition, the court shall order the public employer to appear in court at a specified time not less than 10 or more than 30 days after the day the petition was filed and show cause why the applicant was not hired for the position. At the hearing, the public employer has the burden of proving by a preponderance of the evidence that the employer made a reasonable determination pursuant to subsection (9) of 39-30-103 and the applicant has the burden of proving by a preponderance of the evidence that he is a preference eligible applicant.

(b) The time to appear provided in subsection (3)(a) may be waived by stipulation of the parties. If a time to appear has been specified pursuant to subsection (3)(a), the court may, on motion of one of the parties or on stipulation of all of the parties, grant a continuance.

(c) If the public employer does not carry its burden of proof under subsection (3)(a) and the court has found that the applicant is a preference eligible applicant, the court shall order the public employer to reopen the selection process for the position involved and shall grant the applicant reasonable attorney fees and court costs. The remedy provided by this section is the only remedy for a violation of this chapter, and a court may not grant any other relief in an action for violation of this chapter.

(4) Failure of an applicant to file a petition under subsection (2) within 90 days bars the filing of a petition. If a public employer fails to provide an explanation under subsection (1) within 15 days and a petition is filed under subsection (2), the court shall order the public employer to reopen the selection process.

(5) The Montana Rules of Civil Procedure apply to a proceeding under this section to the extent that they do not conflict with this section.

History: En. Sec. 8(4), Ch. 1, Sp. L. 1983; amd. Sec. 14, Ch. 646, L. 1989.

Compiler's Comments

1989 Amendment: In (3) changed reference to 39-30-103(9) to reference to 39-30-103(7); and made minor changes in phraseology. Amendment terminates July 1, 1991.

Cross-References

Montana Rules of Civil Procedure, Title 25, ch. 20.

Evidence, Title 26.

CHAPTER 31

COLLECTIVE BARGAINING FOR PUBLIC EMPLOYEES

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Chapter Cross-References

Youth Conservation Corps project for job covered by collective bargaining agreement, 76-21-301.

Part 1

General Provisions

39-31-101. Policy. In order to promote public business by removing certain recognized sources of strife and unrest, it is the policy of the state of Montana to encourage the practice and procedure of collective bargaining to arrive at friendly adjustment of all disputes between public employers and their employees.

History: **En. Sec. 1, Ch. 441, L. 1973; R.C.M. 1947, 59-1601.**

39-31-102. Chapter not a limit on legislative authority. This chapter does not limit the authority of the legislature, any political subdivision, or the governing body relative to appropriations for salary and wages, hours, fringe benefits, and other conditions of employment.

History: **En. Sec. 5, Ch. 441, L. 1973; amd. Sec. 1, Ch. 36, L. 1975; amd. Sec. 1, Ch. 97, L. 1975; amd. Sec. 2, Ch. 384, L. 1975; R.C.M. 1947, 59-1605(5).**

39-31-103. Definitions. When used in this chapter, the following definitions apply:

(1) "Public employer" means the state of Montana or any political subdivision thereof, including but not limited to any town, city, county, district, school board, board of regents, public and quasi-public corporation, housing authority or other authority established by law, and any representative or agent designated by the public employer to act in its interest in dealing with

public employees. Public employer also includes any local public agency designated as a head start agency as provided in 42 U.S.C. 9836.

(2) (a) "Public employee" means:

(i) except as provided in subsection (2)(b) of this section, a person employed by a public employer in any capacity; and

(ii) an individual whose work has ceased as a consequence of or in connection with any unfair labor practice or concerted employee action.

(b) "Public employee" does not mean:

(i) an elected official;

(ii) a person directly appointed by the governor;

(iii) a supervisory employee, as defined in subsection (3) of this section;

(iv) a management official, as defined in subsection (4) of this section;

(v) a confidential employee, as defined in subsection (12) of this section;

(vi) a member of any state board or commission who serves the state intermittently;

(vii) a school district clerk;

(viii) a school administrator;

(ix) a registered professional nurse performing service for a health care facility;

(x) a professional engineer; or

(xi) an engineer-in-training.

(3) "Supervisory employee" means any individual having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, discipline other employees, having responsibility to direct them, to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature but requires the use of independent judgment.

(4) "Management official" means a representative of management having authority to act for the agency on any matters relating to the implementation of agency policy.

(5) "Labor organization" means any organization or association of any kind in which employees participate and which exists for the primary purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, fringe benefits, or other conditions of employment.

(6) "Exclusive representative" means the labor organization which has been designated by the board as the exclusive representative of employees in an appropriate unit or has been so recognized by the public employer.

(7) "Board" means the board of personnel appeals provided for in 2-15-1705.

(8) "Person" includes one or more individuals, labor organizations, public employees, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(9) "Unfair labor practice" means any unfair labor practice listed in 39-31-401 or 39-31-402.

(10) "Labor dispute" includes any controversy concerning terms, tenure, or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange

terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(11) "Appropriate unit" means a group of public employees banded together for collective bargaining purposes as designated by the board.

(12) "Confidential employee" means any person found by the board to be a confidential labor relations employee and any person employed in the personnel division, department of administration, who acts with discretionary authority in the creation or revision of state classification specifications.

History: **En. Sec. 2, Ch. 441, L. 1973; amd. Sec. 1, Ch. 117, L. 1975; amd. Sec. 1, Ch. 384, L. 1975; R.C.M. 1947, 59-1602(part); amd. Sec. 1, Ch. 271, L. 1979; amd. Sec. 31, Ch. 397, L. 1979; amd. Sec. 1, Ch. 354, L. 1987.**

39-31-104. Rules. The board shall adopt, amend, or rescind such rules it considers necessary and administratively feasible to carry out the provisions of this chapter.

History: **En. Sec. 13, Ch. 441, L. 1973; R.C.M. 1947, 59-1613(4).**

Cross-References

Administrative rulemaking procedure, Title 2, ch. 4, parts 1 through 3.

"Board" defined, 39-31-103.

39-31-105. Administrative procedure act applicable. All hearings and appeals shall be in accordance with the appropriate provisions of the Montana Administrative Procedure Act.

History: **En. Sec. 17, Ch. 441, L. 1973; R.C.M. 1947, 59-1616.**

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

39-31-106. Board authorized to subpoena witnesses and administer oaths. (1) To accomplish the objectives and to carry out the duties prescribed by this chapter, the board may subpoena witnesses and may administer oaths and affirmations.

(2) In cases of neglect or refusal to obey a subpoena issued to any person, the district court of the county in which the investigations or the public hearings are taking place or the district court of the first judicial district of this state, upon application by the board, may issue an order requiring such person to appear before the board or agent to produce evidence or give testimony about the matter under investigation. Failure to obey such order may be punished by the court as contempt.

History: **En. Sec. 13, Ch. 441, L. 1973; R.C.M. 1947, 59-1613(1), (2).**

Cross-References

Contempts, Title 3, ch. 1, part 5.

Subpoena, Rule 45, M.R.Civ.P. (see Title 25, ch. 20).

"Board" defined, 39-31-103.

"Person" defined, 39-31-103.

39-31-107. Service of subpoenas, notices of hearing, and other process. Any subpoena, notice of hearing, or other process or notice of the board issued under the provisions of this chapter shall be served as provided by the rules of civil procedure.

History: **En. Sec. 13, Ch. 441, L. 1973; R.C.M. 1947, 59-1613(3).**

Cross-References

Montana Rules of Civil Procedure, Title 25, ch. 20.

"Board" defined, 39-31-103.

39-31-108. Counsel for public parties to litigation. In any action brought under the provisions of this chapter in the courts of this state, the public employer shall be represented by the attorney general or attorney of subdivision and the board shall be represented by counsel hired to represent the board for purposes of that proceeding.

History: **En. Sec. 11, Ch. 441, L. 1973; R.C.M. 1947, 59-1611.**

Cross-References

"Public employer" defined, 39-31-103.

39-31-109. Existing collective bargaining agreements not affected. Nothing in this chapter shall be construed to remove recognition of established collective bargaining agreements already recognized or in existence prior to July 1, 1973.

History: **En. Sec. 16, Ch. 441, L. 1973; R.C.M. 1947, 59-1615.**

Part 2

Public Employee Self-Organization and Certification of Bargaining Representative

39-31-201. Public employees protected in right of self-organization. Public employees shall have and shall be protected in the exercise of the right of self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing on questions of wages, hours, fringe benefits, and other conditions of employment, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection free from interference, restraint, or coercion.

History: **En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974; R.C.M. 1947, 59-1603(1).**

Cross-References

"Labor organization" defined, 39-31-103.

39-31-202. Board to determine appropriate bargaining unit — factors to be considered. In order to assure employees the fullest freedom in exercising the rights guaranteed by this chapter, the board or an agent of the board shall decide the unit appropriate for the purpose of collective bargaining and shall consider such factors as community of interest, wages, hours, fringe benefits, and other working conditions of the employees involved, the history of collective bargaining, common supervision, common personnel policies, extent of integration of work functions and interchange among employees affected, and the desires of the employees.

History: **En. Sec. 6, Ch. 441, L. 1973; amd. Sec. 1, Ch. 136, L. 1975; R.C.M. 1947, 59-1606(2).**

Cross-References

"Board" defined, 39-31-103.

39-31-203. Deduction of dues from employee's pay. Upon written authorization of any public employee within a bargaining unit, the public employer shall deduct from the pay of the public employee the monthly amount of dues as certified by the secretary of the exclusive representative and shall deliver the dues to the treasurer of the exclusive representative.

History: **En. Sec. 12, Ch. 441, L. 1973; R.C.M. 1947, 59-1612.**

Cross-References

"Public employee" defined, 39-31-103.

"Public employer" defined, 39-31-103.

39-31-204. Right of nonassociation with labor organization on religious grounds — requirements and procedure for assertion of right. (1) No public employee who is a member of a bona fide religious sect or division thereof, the established and traditional tenets or teachings of which oppose a requirement that a member of such sect or division join or financially support a particular or any labor organization, may be required to join or financially support that particular labor organization or any labor organization if the tenets or teachings oppose a requirement that any labor organization be joined or supported as a condition of employment if such public employee pays in lieu of periodic union dues, initiation fees, and assessments, at the same time or times such periodic union dues, initiation fees, and assessments would otherwise be payable, a sum of money equivalent to such periodic union dues, initiation fees, and assessments to a nonreligious, nonunion charity designated by the labor organization. Such public employee shall furnish to such labor organization written receipts evidencing such payments, and failure to make such payments or furnish such receipts shall subject the employee to the same sanctions as would nonpayment of dues, initiation fees, or assessments under the applicable collective bargaining agreement.

(2) A public employee desiring to avail himself or herself to the right of nonassociation with a labor organization as provided in this section shall make written application to the chairman of the board of personnel appeals. Within 10 days of the date of receipt of such application, the chairman shall appoint a committee of three, consisting of a clergyman not connected with the sect in question, a labor union official not directly connected with the labor organization in question, and a member of the public at large who shall be the chairman. The committee shall within 10 days of the date of its appointment meet at the locale of either the employee's residence or place of employment and, after receiving written or oral presentations from all interested parties, determine by a majority vote whether or not such public employee qualifies for the right of nonassociation with such labor organization. The committee's decision shall be made in writing within 3 days of the meeting date, and a copy thereof shall be forthwith mailed to such public employee, labor organization, and the chairman of the board of personnel appeals.

History: **En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974; R.C.M. 1947, 59-1603(5); amd. Sec. 1, Ch. 237, L. 1985.**

Cross-References

Freedom of religion, Art. II, sec. 5, Mont. Const.

"Board" defined, 39-31-103.

"Labor organization" defined, 39-31-103.

"Public employee" defined, 39-31-103.

39-31-205. Designated labor organizations to represent employees without discrimination. Labor organizations designated in accordance with the provisions of this chapter are responsible for representing the interest of all employees in the exclusive bargaining unit without discrimination for the purposes of collective bargaining with respect to rates of pay, hours, fringe benefits, and other conditions of employment.

History: En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974; R.C.M. 1947, 59-1603(3).

39-31-206. Labor organization to guarantee certain rights and safeguards prior to certification or recognition. (1) Certification or recognition as an exclusive representative shall be extended or continued, as the case may be, only to a labor or employee organization the written bylaws of which provide for and guarantee the following rights and safeguards and whose practices conform to such rights and safeguards as:

(a) provisions are made for democratic organization and procedures;

(b) elections are conducted pursuant to adequate standards and safeguards;

(c) controls are provided for the regulation of officers and agents having fiduciary responsibility to the organization; and

(d) requirements exist for maintenance of sound accounting and fiscal controls, including annual audits.

(2) The board shall hear and decide all disputes arising under subsection (1).

History: En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974; R.C.M. 1947, 59-1603(4); amd. Sec. 1, Ch. 18, L. 1985.

39-31-207. Petition on representation question — investigation by board — hearing. (1) The board or an agent of the board shall investigate the petition and, if it has reasonable cause to believe that a question of representation exists, it shall provide for an appropriate hearing upon due notice whenever, in accordance with such rules as may be prescribed by the board, a petition has been filed:

(a) by an employee or group of employees or any labor organization acting in their behalf alleging that 30% of the employees:

(i) wish to be represented for collective bargaining by a labor organization as exclusive representative; or

(ii) assert that the labor organization which has been certified or is currently being recognized by the public employer as bargaining representative is no longer the representative of the majority of employees in the unit; or

(b) by the public employer alleging that one or more labor organizations have presented to it a claim to be recognized as the exclusive representative in an appropriate unit.

(2) In this hearing, the board is not bound by common law and statutory rules of evidence.

History: En. Sec. 6, Ch. 441, L. 1973; amd. Sec. 1, Ch. 136, L. 1975; R.C.M. 1947, 59-1606(part).

Cross-References

"Appropriate unit" defined, 39-31-103.
"Board" defined, 39-31-103.
"Labor organization" defined, 39-31-103.
"Public employer" defined, 39-31-103.

39-31-208. Representation election at direction of board. (1) If the board or an agent of the board, in the hearing provided for in 39-31-207, finds that there is a question of representation, it shall direct an election by secret ballot to determine whether and by which labor organization the employees desire to be represented or whether they desire to have no labor organization represent them and shall certify the results thereof.

(2) Only those labor organizations which have been designated by more than 10% of the employees in the unit found to be appropriate shall be placed on the ballot.

(3) The board or an agent of the board shall determine who is eligible to vote in the election and shall establish rules governing the election.

(4) Unless the majority vote is for no representation by a labor organization and in any election where none of the choices for a representative on the ballot receives a majority, a runoff election shall be conducted, the ballot providing for selection between the two choices receiving the largest and the second largest number of valid votes cast in the election.

(5) A labor organization which receives the majority of the votes cast in an election shall be certified by the board as the exclusive representative.

History: En. Sec. 6, Ch. 441, L. 1973; amd. Sec. 1, Ch. 136, L. 1975; R.C.M. 1947, 59-1606(part); amd. Sec. 32, Ch. 397, L. 1979.

Cross-References

"Board" defined, 39-31-103.

"Labor organization" defined, 39-31-103.

39-31-209. Consent election. Nothing in 39-31-207 or 39-31-208 prohibits the waiving of hearings by stipulation for the purpose of a consent election in conformity with the rules of the board.

History: En. Sec. 6, Ch. 441, L. 1973; amd. Sec. 1, Ch. 136, L. 1975; R.C.M. 1947, 59-1606(part).

Cross-References

"Board" defined, 39-31-103.

39-31-210. Election in twelve-month period following valid election prohibited. An election shall not be directed in any bargaining unit or in any subdivision thereof within which in the preceding 12-month period a valid election has been held.

History: En. Sec. 6, Ch. 441, L. 1973; amd. Sec. 1, Ch. 136, L. 1975; R.C.M. 1947, 59-1606(part).

39-31-211. Labor organizations representing employees of the board to be unaffiliated. A labor organization representing employees of the board may not affiliate or associate itself with a labor organization that represents any employees other than employees of the board. The board may not certify a labor organization as the exclusive representative of the employees of the board if, at the time of certification or thereafter, the labor organization is associated or affiliated with a labor organization that represents employees other than employees of the board.

History: En Sec. 2, Ch. 271, L. 1979.

Cross-References

"Board" defined, 39-31-103.

"Labor organization" defined, 39-31-103.

Part 3

Bargaining

39-31-301. Representative of public employer. The chief executive officer of the state, the governing body of a political subdivision, the commissioner of higher education, whether elected or appointed, or the designated authorized representative shall represent the public employer in collective bargaining with an exclusive representative.

History: En. Sec. 9, Ch. 441, L. 1973; amd. Sec. 3, Ch. 313, L. 1974; amd. Sec. 1, Ch. 35, L. 1975; R.C.M. 1947, 59-1609.

Cross-References

"Public employer" defined, 39-31-103.

39-31-302. Participation by student representative when public employer is board of regents. When the board of regents is the public employer defined in 39-31-103, the student government at an institution of higher education may designate an agent or representative to meet and confer with the board of regents and the faculty bargaining agent prior to negotiations with the professional educational employees, to observe those negotiations and participate in caucuses as part of the public employer's bargaining team, and to meet and confer with the board of regents regarding the terms of agreement prior to the execution of a written contract between the regents and the professional educational employees. The student observer is obliged to maintain the confidentiality of these negotiations.

History: En. Sec. 2, Ch. 441, L. 1973; amd. Sec. 1, Ch. 117, L. 1975; amd. Sec. 1, Ch. 384, L. 1975; R.C.M. 1947, 59-1602(part).

Cross-References

"Board" defined, 39-31-103.

"Public employer" defined, 39-31-103.

39-31-303. Management rights of public employers. Public employees and their representatives shall recognize the prerogatives of public employers to operate and manage their affairs in such areas as, but not limited to:

(1) direct employees;

(2) hire, promote, transfer, assign, and retain employees;

(3) relieve employees from duties because of lack of work or funds or under conditions where continuation of such work be inefficient and nonproductive;

(4) maintain the efficiency of government operations;

(5) determine the methods, means, job classifications, and personnel by which government operations are to be conducted;

(6) take whatever actions may be necessary to carry out the missions of the agency in situations of emergency;

(7) establish the methods and processes by which work is performed.

History: En. Sec. 3, Ch. 441, L. 1973; amd. Sec. 1, Ch. 244, L. 1974; R.C.M. 1947, 59-1603(2).

Cross-References

Veterans' public employment preference, Title 39, ch. 29.

Handicapped persons' public employment preference, Title 39, ch. 30.

39-31-304. Negotiable items for school districts. Nothing in this chapter shall require or allow boards of trustees of school districts to bargain collectively upon any matter other than matters specified in 39-31-305(2).

History: En. Sec. 2, Ch. 117, L. 1975; R.C.M. 1947, 59-1617.

39-31-305. Duty to bargain collectively — good faith. (1) The public employer and the exclusive representative, through appropriate officials or their representatives, shall have the authority and the duty to bargain collectively. This duty extends to the obligation to bargain collectively in good faith as set forth in subsection (2) of this section.

(2) For the purpose of this chapter, to bargain collectively is the performance of the mutual obligation of the public employer or his designated representatives and the representatives of the exclusive representative to meet at reasonable times and negotiate in good faith with respect to wages, hours, fringe benefits, and other conditions of employment or the negotiation of an agreement or any question arising thereunder and the execution of a written contract incorporating any agreement reached. Such obligation does not compel either party to agree to a proposal or require the making of a concession.

(3) For purposes of state government only, the requirement of negotiating in good faith may be met by the submission of a negotiated settlement to the legislature in the executive budget or by bill or joint resolution. The failure to reach a negotiated settlement for submission is not, by itself, prima facie evidence of a failure to negotiate in good faith.

History: (1)En. Sec. 4, Ch. 441, L. 1973; Sec. 59-1604, R.C.M. 1947; (2), (3)En. Sec. 5, Ch. 441, L. 1973; amd. Sec. 1, Ch. 36, L. 1975; amd. Sec. 1, Ch. 97, L. 1975; amd. Sec. 2, Ch. 384, L. 1975; Sec. 59-1605, R.C.M. 1947; R.C.M. 1947, 59-1604, 59-1605(3), (4).

Cross-References

"Public employer" defined, 39-31-103.

39-31-306. Collective bargaining agreements. (1) Any agreement reached by the public employer and the exclusive representative shall be reduced to writing and shall be executed by both parties.

(2) An agreement may contain a grievance procedure culminating in final and binding arbitration of unresolved grievances and disputed interpretations of agreements.

(3) An agreement between the public employer and a labor organization shall be valid and enforced under its terms when entered into in accordance with the provisions of this chapter and signed by the chief executive officer of the state or political subdivision or commissioner of higher education or his representative. A publication of the agreement is not required to make it effective.

(4) The procedure for the making of an agreement between the state or political subdivision and a labor organization provided by this chapter is the exclusive method of making a valid agreement for public employees represented by a labor organization.

History: En. Sec. 10, Ch. 441, L. 1973; amd. Sec. 4, Ch. 313, L. 1974; R.C.M. 1947, 59-1610.

Cross-References

"Labor organization" defined, 39-31-103.

"Public employer" defined, 39-31-103.

39-31-307. Mediation of disputes. If, after a reasonable period of negotiation over the terms of an agreement or upon expiration of an existing collective bargaining agreement, a dispute concerning the collective bargaining agreement exists between the public employer and a labor organization, the parties shall request mediation.

History: En. Sec. 14, Ch. 441, L. 1973; amd. Sec. 1, Ch. 18, L. 1975; R.C.M. 1947, 59-1614(1).

Cross-References

"Labor organization" defined, 39-31-103.

"Public employer" defined, 39-31-103.

39-31-308. Initiation of factfinding — designation of fact finder. (1) If, upon expiration of an existing collective bargaining agreement or 30 days following certification or recognition of an exclusive representative, a dispute concerning the collective bargaining agreement exists between the employer and the exclusive representative, either party may petition the board to initiate factfinding.

(2) Within 3 days of receipt of such petition, the board shall submit to the parties a list of five qualified, disinterested persons from which the parties shall alternate in striking two names. The remaining person shall be designated fact finder. This process shall be completed within 5 days of receipt of the list. The parties shall notify the board of the designated fact finder.

(3) If no request for factfinding is made by either party before the expiration of the agreement or 30 days following certification or recognition of an exclusive representative, the board may initiate factfinding as provided for in subsection (2) above.

History: En. Sec. 14, Ch. 441, L. 1973; amd. Sec. 1, Ch. 18, L. 1975; R.C.M. 1947, 59-1614(2) thru (4).

Cross-References
"Board" defined, 39-31-103.
"Person" defined, 39-31-103.

39-31-309. Factfinding proceedings. (1) The fact finder shall immediately establish dates and place of hearings.

(2) The public employer and the exclusive representative are the only proper parties to factfinding proceedings.

(3) Upon request of either party or the fact finder, the board shall issue subpoenas for hearings conducted by the fact finder. The fact finder may administer oaths.

(4) Upon completion of the hearings, but no later than 20 days from the date of appointment, the fact finder shall make written findings of facts and recommendations for resolution of the dispute and shall serve such findings on the public employer and the exclusive representative. The fact finder may make this report public 5 days after it is submitted to the parties. If the dispute is not resolved 15 days after the report is submitted to the parties, the report must be made public.

(5) The cost of factfinding proceedings must be equally borne by the board and the parties concerned.

(6) Nothing in 39-31-307 through 39-31-310 prohibits the fact finder from endeavoring to mediate the dispute in which he has been selected or appointed as fact finder.

History: En. Sec. 14, Ch. 441, L. 1973; amd. Sec. 1, Ch. 18, L. 1975; R.C.M. 1947, 59-1614(5) thru (8); amd. Sec. 33, Ch. 397, L. 1979.

Cross-References
"Board" defined, 39-31-103.
"Public employer" defined, 39-31-103.

39-31-310. Submission of issues to arbitration. Nothing in 39-31-307 through 39-31-310 prohibits the parties from voluntarily agreeing to submit any or all of the issues to final and binding arbitration, and if such agreement is reached, the arbitration shall supersede the factfinding procedures set forth in those sections. An agreement to arbitrate and the award issued in accordance with such agreement shall be enforceable in the same manner as is provided in this chapter for enforcement of collective bargaining agreements.

History: **En. Sec. 14, Ch. 441, L. 1973; amd. Sec. 1, Ch. 18, L. 1975; R.C.M. 1947, 59-1614(9).**

Cross-References

Uniform Arbitration Act, Title 27, ch. 5.

39-31-311. Training of fact finders and arbitrators. The board of personnel appeals shall establish a course of education for the training of fact finders and arbitrators. No person may serve as a fact finder or as an arbitrator under this chapter until he has successfully completed the course or equivalent education.

History: **En. 59-1614.1 by Sec. 1, Ch. 57, L. 1977; R.C.M. 1947, 59-1614.1.**

Cross-References

"Board" defined, 39-31-103.

"Person" defined, 39-31-103.

39-31-312. Nonnegotiable items for state prison. Collective bargaining agreements entered after July 14, 1982, may not contain provisions prohibiting or restricting the use of inmate labor as provided for in 53-30-151.

History: **En. Sec. 3, Ch. 7, Sp. L. 1982.**

Part 4

Unfair Labor Practices

39-31-401. Unfair labor practices of public employer. It is an unfair labor practice for a public employer to:

(1) interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in 39-31-201;

(2) dominate, interfere, or assist in the formation or administration of any labor organization; however, subject to rules adopted by the board under 39-31-104, an employer is not prohibited from permitting employees to confer with him during working hours without loss of time or pay;

(3) discriminate in regard to hire or tenure of employment or any term or condition of employment in order to encourage or discourage membership in any labor organization; however, nothing in this chapter or in any other statute of this state precludes a public employer from making an agreement with an exclusive representative to require, as a condition of employment, that an employee who is not or does not become a union member, must have an amount equal to the union initiation fee and monthly dues deducted from his wages in the same manner as checkoff of union dues;

(4) discharge or otherwise discriminate against an employee because he has signed or filed an affidavit, petition, or complaint or given any information or testimony under this chapter; or

(5) refuse to bargain collectively in good faith with an exclusive representative.

History: **En. Sec. 5, Ch. 441, L. 1973; amd. Sec. 1, Ch. 36, L. 1975; amd. Sec. 1, Ch. 97, L. 1975; amd. Sec. 2, Ch. 384, L. 1975; R.C.M. 1947, 59-1605(1); amd. Sec. 34, Ch. 397, L. 1979.**

Cross-References

"Board" defined, 39-31-103.

"Labor organization" defined, 39-31-103.

"Public employer" defined, 39-31-103.

"Unfair labor practice" defined, 39-31-103.

39-31-402. Unfair labor practices of labor organization. It is an unfair labor practice for a labor organization or its agents to:

(1) restrain or coerce employees in the exercise of the right guaranteed in 39-31-201 or a public employer in the selection of his representative for the purpose of collective bargaining or the adjustment of grievances;

(2) refuse to bargain collectively in good faith with a public employer if it has been designated as the exclusive representative of employees;

(3) use agency shop fees for contributions to political candidates or parties at state or local levels.

History: En. Sec. 5, Ch. 441, L. 1973; amd. Sec. 1, Ch. 36, L. 1975; amd. Sec. 1, Ch. 97, L. 1975; amd. Sec. 2, Ch. 384, L. 1975; R.C.M. 1947, 59-1605(2).

Cross-References

"Public employer" defined, 39-31-103.

"Labor organization" defined, 39-31-103.

"Unfair labor practice" defined, 39-31-103.

39-31-403. Remedies for unfair labor practices. Violations of the provisions of 39-31-401 or 39-31-402 are unfair labor practices remediable by the board pursuant to this part.

History: En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(part); amd. Sec. 35, Ch. 397, L. 1979.

Cross-References

"Board" defined, 39-31-103.

39-31-404. Six-month limitation on unfair labor practice complaint — exception. No notice of hearing shall be issued based upon any unfair labor practice more than 6 months before the filing of the charge with the board unless the person aggrieved thereby was prevented from filing the charge by reason of service in the armed forces, in which event the 6-month period shall be computed from the day of his discharge.

History: En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(part).

Cross-References

"Unfair labor practice" defined, 39-31-103.

39-31-405. Unfair labor practice complaint — investigation — notice of hearing — service — answer. (1) Whenever a complaint is filed alleging that any person has engaged in or is engaging in any such unfair labor practice, the board shall issue and cause to be served upon the person a copy of the complaint and provide the person with an opportunity to respond to all charges. After receipt of responses from the charged party, an agent designated by the board for such purposes shall investigate the alleged unfair labor practice.

(2) If, after the investigation, the agent designated by the board determines that the charge is without probable merit, the board shall issue and cause to be served upon the complaining party and the person being charged notice of its intention to dismiss the complaint. The dismissal becomes a final order of the board unless either party requests a review of the decision to dismiss the complaint. The request for a review must be made in writing within 10 days of receipt of the notice of intention to dismiss. If a review is requested, the board may uphold its decision to dismiss the complaint or, pursuant to subsection (3), schedule a hearing on the merits. If the board upholds

its decision to dismiss the complaint, the dismissal becomes a final order of the board.

(3) If after the investigation or after the review provided for in subsection (2), the board determines that there is probable merit for the charge, the board shall issue and cause to be served upon the complaining party and the party charged a notice of hearing before the board, a member thereof, or before a designated agent at a time and place therein fixed, not less than 5 working days after the date of service.

(4) If a hearing is to be held, the person against whom the charge is filed shall file an answer to the complaint.

(5) Each party to an unfair labor practice proceeding has the right to disqualify, without cause, the hearing examiner designated by the board to hear the complaint. The right may be exercised only once by each party and must be exercised within 5 days from the time a party is notified by the board of the hearing examiner designated to hear the matter. The exercise of this right is in addition to any rights a party has to disqualify a hearing examiner under 2-4-611.

History: **En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(part); amd. Sec. 1, Ch. 95, L. 1983; (5)En. Sec. 1, Ch. 211, L. 1983.**

Cross-References

Administrative contested case procedure, Title 2, ch. 4, part 6.

"Board" defined, 39-31-103.

"Person" defined, 39-31-103.

"Unfair labor practice" defined, 39-31-103.

39-31-406. Hearing on complaint — findings — order. (1) The complainant and the person charged shall be parties and shall appear in person or otherwise give testimony at the place and time fixed in the notice of hearing. In the discretion of the board or its agent conducting the hearing, any other person may be allowed to intervene in the proceeding and present testimony.

(2) In any hearing the board is not bound by the rules of evidence prevailing in the courts.

(3) The testimony taken by the board or its agent shall be reduced to writing and filed with the board. Thereafter, in its discretion the board upon notice may take further testimony or hear argument.

(4) If, upon the preponderance of the testimony taken, the board is of the opinion that any person named in the complaint has engaged in or is engaging in an unfair labor practice, it shall state its findings of fact and shall issue and cause to be served on the person an order requiring him to cease and desist from the unfair labor practice and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this chapter. The order may further require the person to make reports from time to time showing the extent to which he has complied with the order. No order of the board shall require the reinstatement of any individual as an employee who has been suspended or discharged or the payment to him of any back pay if it is found that the individual was suspended or discharged for cause.

(5) If, upon the preponderance of the testimony taken, the board is not of the opinion that the person named in the complaint has engaged in or is engaging in the unfair labor practice, then the board shall state its findings of fact and shall issue an order dismissing the complaint.

(6) If the evidence is presented before a member of the board or before an examiner, the member or the examiner, as the case may be, shall issue and cause to be served on the parties to the proceeding a proposed decision, together with a recommended order, which shall be filed with the board, and if no exceptions are filed within 20 days after service thereof upon the parties or within such further period as the board may authorize, the recommended order shall become the order of the board. The board shall issue a final order within 5 months after final briefs are submitted to the hearing officer. If briefs are to be submitted, but either or both of the parties fail to submit their brief on the date set by the hearing examiner at the close of the hearing on the matter, then the board shall issue a final order within 5 months after the date the last brief was ordered to be submitted. If no briefs are to be submitted, the board shall issue a final order within 5 months after the hearing.

History: En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(part); amd. Sec. 1, Ch. 369, L. 1979; amd. Sec. 1, Ch. 213, L. 1983.

Cross-References

Administrative contested case procedure, Title 2, ch. 4, part 6.

"Board" defined, 39-31-103.

"Person" defined, 39-31-103.

"Unfair labor practice" defined, 39-31-103.

39-31-407. Amendment of complaint. Any complaint may be amended by the complainant at any time prior to the issuance of an order based thereon, provided that the charged party is not unfairly prejudiced thereby.

History: En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(part).

39-31-408. Modification by board of findings and order. Until the record in a proceeding has been filed in district court, the board at any time, upon reasonable notice and in such manner as it considers proper, may modify or set aside, in whole or in part, any finding or order made or issued by it.

History: En. Sec. 7, Ch. 441, L. 1973; R.C.M. 1947, 59-1607(3).

Cross-References

"Board" defined, 39-31-103.

39-31-409. Court enforcement and review of board order. (1) The board or the complaining party may petition for the enforcement of the order of the board and for appropriate temporary relief or a restraining order and shall file in the district court at its own expense the record in the proceedings.

(2) Upon the filing of the petition, the district court shall have jurisdiction of the proceeding. Thereafter, the district court shall set the matter for hearing and shall order the party charged to be served with notice of hearing at least 20 days before the date set for hearing.

(3) No objection that has not been raised before the board shall be considered by the court unless the failure or neglect to raise the objection is excused because of extraordinary circumstances.

(4) The findings of the board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

(5) If either party applies to the court for leave to present additional evidence and shows to the satisfaction of the court that the additional evidence

is material and that there were reasonable grounds for the failure to present it in the hearing before the board, the court may order the additional evidence to be taken before the board and to be made part of the record. The board may modify its findings as to the facts or make new findings by reason of additional evidence so taken and filed, and it shall file the modifying or new findings with the district court.

(6) After the hearing, the district court shall issue its order granting such temporary or permanent relief or restraining order as it considers just and proper, enforcing as so modified or setting aside, in whole or in part, the order of the board. Any order of the district court shall be subject to review by the supreme court in accordance with rules of civil procedure.

(7) The commencement of proceedings under subsections (1) through (6) of this section shall not, unless specifically ordered by the court, operate as a stay of the board's order.

History: En. Sec. 8, Ch. 441, L. 1973; R.C.M. 1947, 59-1608.

Cross-References

Judicial review of contested cases, Title 2, ch. 4, part 7.

"Board" defined, 39-31-103.

CHAPTER 32

COLLECTIVE BARGAINING FOR NURSES

Part 1 — General Provisions

39-32-101. Purpose of chapter.
39-32-102. Definitions.
39-32-103. Rules.
39-32-104. Hearings for determination of appropriate unit.
39-32-105. General classifications for health care facilities and appropriate units — petition for removal from general classification.
39-32-106. Determination of appropriate bargaining unit.
39-32-107. Repealed.
39-32-108. Repealed.
39-32-109. Unfair labor practices.
39-32-110. Unlawful strikes.
39-32-111. Repealed.
39-32-112. Adjudication of unfair labor practices complaints by board.
39-32-113. Representation questions decided by board.
39-32-114. Subpoena power of board.

Chapter Cross-References

Regulation and licensure of nurses, Title 37, ch. 8.

Regulation and licensure of hospitals, Title 50, ch. 5.

Part 1

General Provisions

39-32-101. Purpose of chapter. The purpose of this chapter is to encourage effective measures to assure uninterrupted continuation of sufficient competent nursing care of the ill and infirm in the state and further to encourage the practice of mutually and peacefully agreeing upon the establishment and maintenance of desirable employment practices between nurse employees, professional and practical, and their health care facility employers, either public or private.

History: **En. Sec. 1, Ch. 320, L. 1969; R.C.M. 1947, 41-2201.**

39-32-102. Definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Appropriate unit" means a homogenous group of employees (as herein defined) of a health care facility having similar duties and qualifications determined pursuant to 39-32-106.

(2) "Board" means the board of personnel appeals provided for in 2-15-1705.

(3) "Employee" means a registered professional or licensed practical nurse performing services for compensation for a health care facility but does not include a member of a religious order assigned to a health care facility by the order as a part of her obligation to the order.

(4) "Health care facility" means a hospital or nursing home or other agency or establishment employing employees as defined in this chapter, whether operated publicly or privately, having as one of its principal purposes the preservation of health or the care of sick or infirm individuals, or both.

(5) "Strike" shall mean any work stoppage caused by the employees of a health care facility, as defined in subsection (4) of this section, that interferes with the operation of the health care facility or affects the care of patients in the health care facility.

History: **En. Sec. 2, Ch. 320, L. 1969; R.C.M. 1947, 41-2202(1) thru (3), (5); amd. Sec. 1, Ch. 485, L. 1983.**

39-32-103. Rules. The board shall adopt and promulgate rules to carry into effect the provisions of this chapter.

History: **En. Sec. 7, Ch. 320, L. 1969; R.C.M. 1947, 41-2207(3); amd. Sec. 2, Ch. 485, L. 1983.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

39-32-104. Hearings for determination of appropriate unit. The board may set the time and place for hearings for determination of the composition of appropriate units when requested to make such determination under 39-32-106(2).

History: **En. Sec. 7, Ch. 320, L. 1969; R.C.M. 1947, 41-2207(1); amd. Sec. 3, Ch. 485, L. 1983.**

Cross-References

"Appropriate unit" defined, 39-32-102.

39-32-105. General classifications for health care facilities and appropriate units — petition for removal from general classification. (1) The board may determine, on its own motion by holding hearings or conducting such investigations as it thinks necessary, general classifications for health care facilities and appropriate units.

(2) When such determination has been made hereunder and when an application has been made by a health care facility or an employee organization for a specific determination as to it, the board may make such determination on the basis of such general classification.

(3) The health care facility or employee organization may, within 30 days after notice to it of such determination, file a request for a hearing upon written petition which shall set forth the facts which it believes remove it from such general classification, and hearing shall be held on such petition.

History: **En. Sec. 7, Ch. 320, L. 1969; R.C.M. 1947, 41-2207(2); amd. Sec. 4, Ch. 485, L. 1983.**

Cross-References

"Employee" defined, 39-32-102.

"Health care facility" defined, 39-32-102.

39-32-106. Determination of appropriate bargaining unit. (1) The composition of an appropriate unit in a health care facility, for purposes of this law, may be determined by mutual consent between such facility and the employees thereof.

(2) In the event no such mutual consent is available, then either the facility or representatives of employees may apply to the board and said board, through a duly designated agent, shall make a determination of the composition of such an appropriate unit.

(3) In determining such appropriate unit, professional employees may not be included in the same unit with nonprofessional employees unless a majority of professional employees in a proposed unit desire such inclusion. Weight shall be accorded similarity of duties, licensure, and conditions of employment, among other relevant factors, in determining an appropriate unit.

History: **En. Sec. 4, Ch. 320, L. 1969; R.C.M. 1947, 41-2204; amd. Sec. 5, Ch. 485, L. 1983.**

Cross-References

"Appropriate unit" defined, 39-32-102.

"Health care facility" defined, 39-32-102.

39-32-107. Repealed. Sec. 12, Ch. 485, L. 1983.

History: **En. Sec. 5, Ch. 320, L. 1969; R.C.M. 1947, 41-2205.**

39-32-108. Repealed. Sec. 12, Ch. 485, L. 1983.

History: **En. Sec. 6, Ch. 320, L. 1969; R.C.M. 1947, 41-2206.**

39-32-109. Unfair labor practices. (1) It is an unfair labor practice for a health care facility to do one or more of the following:

(a) interfere with or restrain or coerce employees in any manner in the exercise of their right of self-organization;

(b) initiate, create, dominate, contribute to, or interfere with the formation or administration of any employee organization that has collective bargaining as one of its principal functions;

(c) discriminate in regard to hire terms or conditions of employment when a purpose of such is to discourage membership in an employee organization that has collective bargaining as one of its principal functions;

(d) refuse to meet and bargain in good faith with the duly designated representatives of an appropriate bargaining unit of its employees. For the purpose of this subsection, it is a requirement of bargaining in good faith that the parties be willing to reduce in writing and have their representative sign any agreement arrived at through negotiations and discussion.

(e) unilaterally exclude from work or prevent from working or discharge any one or more employees when the purpose of such action is in whole or in part to interfere with or coerce or intimidate an employee in the exercise of rights assured in this law.

(2) It is an unfair labor practice for a labor organization or its agents to:

(a) restrain or coerce employees in the exercise of the right to:

(i) form, join, or assist any labor organization;

(ii) bargain collectively through representatives of their own choosing; or

(iii) engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection;

(b) restrain or coerce an employer in the selection of his representative for the purpose of collective bargaining or the adjustment of grievances;

(c) refuse to bargain collectively in good faith with an employer if it has been designated as the exclusive representative of employees;

(d) use agency shop fees for contributions to political candidates or parties.

History: En. Sec. 3, Ch. 320, L. 1969; R.C.M. 1947, 41-2203; amd. Sec. 6, Ch. 485, L. 1983; (2)En. Sec. 7, Ch. 485, L. 1983.

Cross-References

"Employee" defined, 39-32-102.

"Health care facility" defined, 39-32-102.

39-32-110. Unlawful strikes. It shall be unlawful for any employee of a health care facility, as defined in 39-32-102, to participate in a strike if there is another strike in effect at another health care facility within a radius of 150 miles. Employees of a health care facility, as defined in 39-32-102, or their duly elected representative must give the health care facility 30 days' written notice of any strike by them and must specify in the notice the day the strike is to begin.

History: En. Sec. 9, Ch. 320, L. 1969; R.C.M. 1947, 41-2209.

Cross-References

"Employee" defined, 39-32-102.

"Health care facility" defined, 39-32-102.

"Strike" defined, 39-32-102.

39-32-111. Repealed. Sec. 12, Ch. 485, L. 1983.

History: En. Sec. 8, Ch. 320, L. 1969; R.C.M. 1947, 41-2208.

39-32-112. Adjudication of unfair labor practices complaints by board. Violations of 39-32-109 are remediable by the board, and board orders are enforceable and reviewable by the court in the same manner as provided for in Title 39, chapter 31, part 4.

History: En. Sec. 8, Ch. 485, L. 1983.

39-32-113. Representation questions decided by board. Representation questions shall be decided by the board in the same manner as provided for in 39-31-207 through 39-31-210.

History: En. Sec. 9, Ch. 485, L. 1983.

39-32-114. Subpoena power of board. The board has the same power to subpoena witnesses and administer oaths and affirmations under this chapter as it does under Title 39, chapter 31, and the provisions of 39-31-106 and 39-31-107 are incorporated by reference into this chapter.

History: En. Sec. 10, Ch. 485, L. 1983.

Cross-References

Procedural rules on subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20).

CHAPTER 33

GENERAL LIMITATIONS ON COLLECTIVE BARGAINING RIGHTS

Part 1 — Right to Work Without Union Interference in Certain Small Businesses

39-33-101. Intent of part.
39-33-102. Immediate family defined.
39-33-103. Unfair labor practice.
39-33-104. Beer and liquor establishment excepted.
39-33-105. Violation.

Part 2 — Employment of Strikebreakers

39-33-201. Recruitment of strikebreakers by third parties.
39-33-202. Professional strikebreakers prohibited.
39-33-203. Agreements to procure strikebreakers prohibited.
39-33-204. Advertising for strikebreakers restricted.
39-33-205. Penalties.

Chapter Cross-References

Youth Conservation Corps project for job covered by collective bargaining agreement, 76-21-301.

Part 1

Right to Work Without Union Interference in Certain Small Businesses

39-33-101. Intent of part. It is the intent of this part that a sole proprietor or a member of a partnership consisting of not more than two partners who own a retail or amusement establishment and the members of his immediate family shall have the right to do any work in his place of business without interference by any union or any member thereof.

History: **En. Sec. 1, Ch. 160, L. 1959; R.C.M. 1947, 41-1801.**

39-33-102. Immediate family defined. "Immediate family" shall include the owner, his spouse, and any children under the age of 18 years.

History: **En. Sec. 3, Ch. 160, L. 1959; R.C.M. 1947, 41-1803.**

39-33-103. Unfair labor practice. Any union or member thereof who shall infringe or interfere with the right of an owner and the members of his immediate family to do any work in his place of business shall be guilty of an unfair labor practice.

History: **En. Sec. 2, Ch. 160, L. 1959; R.C.M. 1947, 41-1802.**

39-33-104. Beer and liquor establishment excepted. Nothing in this part shall apply to an establishment that sells liquor or beer.

History: En. Sec. 4, Ch. 160, L. 1959; R.C.M. 1947, 41-1804.

Cross-References

Liquor licenses, Title 16, ch. 4.

39-33-105. Violation. Violation of any of the provisions of this part shall be punishable by a fine of $50.

History: En. Sec. 5, Ch. 160, L. 1959; R.C.M. 1947, 41-1805.

Part 2

Employment of Strikebreakers

39-33-201. Recruitment of strikebreakers by third parties. No person, partnership, firm, or officer or agent thereof may recruit, procure, supply, or refer a professional strikebreaker for employment in place of an employee involved in a labor dispute when such person, partnership, or firm is not a party to the dispute.

History: En. 41-2501 by Sec. 1, Ch. 40, L. 1975; R.C.M. 1947, 41-2501.

39-33-202. Professional strikebreakers prohibited. (1) An employer involved in a labor dispute may not employ in the place of an employee involved in such dispute a professional strikebreaker who customarily and repeatedly offers himself for employment in the place of employees involved in labor disputes.

(2) A professional strikebreaker who customarily and repeatedly offers himself for employment in place of employees involved in labor disputes may not take or offer to take the place in employment of an employee involved in a labor dispute within the state.

History: En. 41-2502 by Sec. 2, Ch. 40, L. 1975; R.C.M. 1947, 41-2502.

39-33-203. Agreements to procure strikebreakers prohibited. No employer involved in a labor dispute may contract or arrange with any other person, partnership, or firm for the latter to recruit, procure, supply, or refer professional strikebreakers for employment in place of employees involved in the dispute.

History: En. 41-2503 by Sec. 3, Ch. 40, L. 1975; R.C.M. 1947, 41-2503.

39-33-204. Advertising for strikebreakers restricted. No person, partnership, or firm may recruit, solicit, or advertise for employees or refer persons to employment in place of employees involved in a labor dispute without adequate notice in such advertisement or reference that there is a labor dispute at the place at which employment is offered and that the employment offered is in the place of employees involved in such dispute.

History: En. 41-2504 by Sec. 4, Ch. 40, L. 1975; R.C.M. 1947, 41-2504.

39-33-205. Penalties. A person convicted of violating 39-33-201, 39-33-202, or 39-33-203 shall be punished by a fine of not less than $1,000 or more than $5,000 or by imprisonment for not less than 1 or more than 2 years. A person convicted of violating 39-33-204 shall be punished by a fine of not less than $100 or more than $500 or imprisonment for not more than 30 days.

History: **En. 41-2505 by Sec. 5, Ch. 40, L. 1975; R.C.M. 1947, 41-2505.**

Cross-References

Classification of offenses, 45-1-201.

"Misdemeanor" defined, 45-2-101.

CHAPTER 34

ARBITRATION FOR FIREFIGHTERS

Part 1 — General Provisions

39-34-101. Arbitration between firefighters and public employers.
39-34-102. Designation of arbitrator.
39-34-103. Powers and duties of arbitrator for firefighters and public employers.
39-34-104. Collective bargaining permitted during arbitration.
39-34-105. Strikes limited.
39-34-106. Cost of arbitration.

Chapter Cross-References

Firefighters and fire protection, Title 7, ch. 33.

Uniform Arbitration Act, Title 27, ch. 5.

Part 1

General Provisions

39-34-101. Arbitration between firefighters and public employers. (1) This section applies only to firefighters and their public employers.

(2) If an impasse is reached in the course of collective bargaining between a public employer and a firefighters' organization or its exclusive representative and if the procedures for mediation and factfinding in 39-31-307 through 39-31-310 have been exhausted, either party or both jointly may petition the board of personnel appeals for final and binding arbitration.

History: **En. Sec. 1, Ch. 472, L. 1979; amd. Sec. 165, Ch. 575, L. 1981.**

39-34-102. Designation of arbitrator. Within 3 days of the receipt of a petition for final and binding arbitration, the board of personnel appeals shall submit to the parties a list of five qualified and disinterested arbitrators. From the list submitted by the board, the parties shall alternately strike two names. The remaining person shall be designated as the arbitrator. The parties shall notify the board of the designated arbitrator within 5 days of the receipt of the list.

History: **En. Sec. 2, Ch. 472, L. 1979; amd. Sec. 166, Ch. 575, L. 1981.**

39-34-103. Powers and duties of arbitrator for firefighters and public employers. (1) The arbitrator shall establish dates and a place for hearings and may subpoena witnesses and require the submission of evidence necessary to resolve the impasse.

(2) Prior to making a determination on any issue relating to the impasse, the arbitrator may refer the issues back to the parties for further negotiation.

(3) At the conclusion of the hearings, the arbitrator shall require the parties to submit their respective final position on matters in dispute.

(4) The arbitrator shall make a just and reasonable determination of which final position on matters in dispute will be adopted within 30 days of the commencement of the arbitration proceedings. The arbitrator shall notify the board of personnel appeals and the parties, in writing, of his determination.

(5) In arriving at a determination, the arbitrator shall consider any relevant circumstances, including:

(a) comparison of hours, wages, and conditions of employment of the employees involved with employees performing similar services and with other services generally;

(b) the interests and welfare of the public and the financial ability of the public employer to pay;

(c) appropriate cost-of-living indices;

(d) any other factors traditionally considered in the determination of hours, wages, and conditions of employment.

(6) The determination of the arbitrator is final and binding and is not subject to the approval of any governing body.

History: En. Sec. 3, Ch. 472, L. 1979; amd. Sec. 167, Ch. 575, L. 1981.

39-34-104. Collective bargaining permitted during arbitration. Nothing prohibits the parties to the impasse from reaching an agreement prior to the rendering of a determination by the arbitrator.

History: En. Sec. 4, Ch. 472, L. 1979.

39-34-105. Strikes limited. Strikes are prohibited during the term of any contract and the negotiations or arbitration of that contract.

History: En. Sec. 5, Ch. 472, L. 1979.

39-34-106. Cost of arbitration. The cost of arbitration shall be shared equally by the public employer and the firefighters' organization or its exclusive representative.

History: En. Sec. 6, Ch. 472, L. 1979.

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RESERVED

CHAPTER 51

UNEMPLOYMENT INSURANCE

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39-51-102. Declaration of state public policy.
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Part 1

General Provisions

39-51-101. Short title. This chapter shall be known and may be cited as the "Unemployment Insurance Law".

History: En. Sec. 1, Ch. 137, L. 1937; R.C.M. 1947, 87-101; amd. Sec. 1, Ch. 57, L. 1979.

39-51-102. Declaration of state public policy. As a guide to the interpretation and application of this chapter, the public policy of this state is declared to be as follows:

(1) Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state.

(2) Involuntary unemployment is, therefore, a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance.

(3) The legislature, therefore, declares that in its considered judgment the public good and the general welfare of the citizens of this state require the enactment of this measure under the police powers of the state for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own.

History: En. Sec. 2, Ch. 137, L. 1937; R.C.M. 1947, 87-102.

39-51-103. Nonliability of state — right to benefits subject to provisions of chapter and extent of available funds. (1) Benefits shall be deemed to be due and payable under this chapter only to the extent provided in this chapter and to the extent that moneys are available therefor to the credit of the unemployment insurance fund, and neither the state nor the department shall be liable for any amount in excess of such sums.

(2) The legislature reserves the right to amend or repeal all or any part of this chapter at any time and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this chapter or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal this chapter at any time.

History: (1)En. Sec. 18, Ch. 137, L. 1937; amd. Sec. 32, Ch. 368, L. 1975; Sec. 87-147, R.C.M. 1947; (2)En. Sec. 20, Ch. 137, L. 1937; Sec. 87-150, R.C.M. 1947; R.C.M. 1947, 87-147, 87-150; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Cross-References

Laws giving irrevocable privileges prohibited, Art. II, sec. 31, Mont. Const.

Certain retrospective laws prohibited, Art. XIII, sec. 1, Mont. Const.

39-51-104. Chapter to become inoperative if federal act becomes inoperative. If Title III or Title IX of the federal Social Security Act is declared unconstitutional or in any way becomes inoperative, then this chapter shall terminate and cease and have no force and effect as of the date when said title or titles of said act are declared unconstitutional or become inoperative.

History: En. Sec. 22, Ch. 137, L. 1937; R.C.M. 1947, 87-151.

39-51-105. Disbursement of funds if federal act becomes inoperative. If Title III or IX of the federal Social Security Act is declared unconstitutional or in any way is inoperative, this chapter automatically becomes inoperative under the provisions of this chapter and the funds which then remain in the unemployment trust fund shall immediately be paid to the state treasurer to be paid into the unemployment insurance fund and funds there held shall be immediately distributed, upon order of the department, to the employers who have contributed thereto on a proportionate basis. If any part thereof remains undistributed for a period of 1 year it shall be paid to the general fund of the state.

History: En. Subd. (d), Sec. 9, Ch. 137, L. 1937; amd. Sec. 8, Ch. 368, L. 1975; R.C.M. 1947, 87-114; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

39-51-106. Approval by secretary of labor required for chapter to have effect. If the secretary of labor shall fail to approve this chapter, the same shall immediately terminate and have no force and effect.

History: En. Sec. 23, Ch. 137, L. 1937; amd. Sec. 12, Ch. 156, L. 1961; R.C.M. 1947, 87-152.

Part 2

Definitions

39-51-201. General definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(2) "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period shall be that applicable under the unemployment law of the paying state. For an individual who fails to meet the qualifications of 39-51-2105 or a similar statute of another state due to a temporary total disability as defined in 39-71-116 or a similar statute of another state or the United States, the base period means the first four quarters of the last five quarters preceding the disability if a claim for unemployment benefits is filed within 24 months of the date on which the individual's disability was incurred.

(3) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to the individual's unemployment.

(4) "Benefit year", with respect to any individual, means the 52-consecutive-week period beginning with the first day of the calendar week in which such individual files a valid claim for benefits, except that the benefit year shall be 53 weeks if filing a new valid claim would result in overlapping any quarter of the base year of a previously filed new claim. A subsequent benefit year may not be established until the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state.

(5) "Board" means the board of labor appeals provided for in Title 2, chapter 15, part 17.

(6) "Calendar quarter" means the period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(7) "Contributions" means the money payments to the state unemployment insurance fund required by this chapter but does not include assessments under 39-51-404(4).

(8) "Department" means the department of labor and industry provided for in Title 2, chapter 15, part 17.

(9) "Employing unit" means any individual or organization, including the state government, any of its political subdivisions or instrumentalities, any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person which has or had in its employ one or more individuals performing services for it within this state, except as provided under subsections (8) and (9) of 39-51-203. All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state are considered to be employed by a single employing unit for all the purposes of this chapter. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit is deemed to be employed by such employing unit for the purposes of this chapter, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit has actual or constructive knowledge of the work.

(10) "Employment office" means a free public employment office or branch thereof operated by this state or maintained as a part of a state-controlled

system of public employment offices or such other free public employment offices operated and maintained by the United States government or its instrumentalities as the department may approve.

(11) "Fund" means the unemployment insurance fund established by this chapter to which all contributions and payments in lieu of contributions are required to be paid and from which all benefits provided under this chapter shall be paid.

(12) "Gross misconduct" means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct which demonstrates a flagrant and wanton disregard of and for the rights or title or interest of a fellow employee or the employer.

(13) "Hospital" means an institution which has been licensed, certified, or approved by the state as a hospital.

(14) "Independent contractor" means an individual who renders service in the course of an occupation and:

(a) has been and will continue to be free from control or direction over the performance of the services, both under his contract and in fact; and

(b) is engaged in an independently established trade, occupation, profession, or business.

(15) (a) "Institution of higher education", for the purposes of this part, means an educational institution which:

(i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such a certificate;

(ii) is legally authorized in this state to provide a program of education beyond high school;

(iii) provides an educational program for which it awards a bachelor's or higher degree or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this state are institutions of higher education for purposes of this part.

(16) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada.

(17) "Unemployment insurance administration fund" means the unemployment insurance administration fund established by this chapter from which administrative expenses under this chapter shall be paid.

(18) (a) "Wages" means all remuneration payable for personal services, including commissions and bonuses, the cash value of all remuneration payable in any medium other than cash, and backpay received pursuant to a dispute related to employment. The reasonable cash value of remuneration payable in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the department.

(b) The term "wages" does not include:

(i) the amount of any payment made by the employer, if the payment was made under a plan established for the employees in general or for a specific class or classes of employees, to or on behalf of the employee for:

(A) retirement;

(B) sickness or accident disability, but in the case of payments made by an employer directly to an employee, only those payments made under a workers' compensation law are excluded from "wages";

(C) medical and hospitalization expenses in connection with sickness or accident disability; or

(D) death;

(ii) remuneration paid by any county welfare office from public assistance funds for services performed at the direction and request of such county welfare office.

(19) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

(20) An individual's "weekly benefit amount" means the amount of benefits the individual would be entitled to receive for 1 week of total unemployment.

History: (1), (14), (18) thru (21)En. Subd. (n) to (r), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 6, Ch. 190, L. 1945; amd. Sec. 3, Ch. 238, L. 1955; amd. Sec. 12, Ch. 171, L. 1957; amd. Sec. 11, Ch. 156, L. 1961; amd. Sec. 4, Ch. 269, L. 1963; amd. Sec. 1, Ch. 200, L. 1969; amd. Sec. 33, Ch. 368, L. 1975; amd. Sec. 1, Ch. 115, L. 1977; Sec. 87-149, R.C.M. 1947; (2), (4) thru (13), (15) thru (17)En. Subd. (a) to (m), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 1, Ch. 160, L. 1953; amd. Sec. 9, Ch. 164, L. 1955; amd. Sec. 11, Ch. 171, L. 1957; amd. Sec. 1, Ch. 177, L. 1959; amd. Sec. 1, Ch. 178, L. 1959; amd. Sec. 2, Ch. 84, L. 1965; amd. Sec. 2, Ch. 37, L. 1969; amd. Sec. 1, Ch. 411, L. 1971; amd. Sec. 1, Ch. 159, L. 1973; amd. Sec. 1, Ch. 404, L. 1973; amd. Sec. 3, Ch. 323, L. 1975; amd. Sec. 1, Ch. 523, L. 1977; Sec. 87-148, R.C.M. 1947; (3)En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; Sec. 87-109, R.C.M. 1947; R.C.M. 1947, 87-109(part), 87-148(a) thru (h), (k) thru (p), 87-149(part); amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 170, L. 1979; amd. Sec. 36, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 245, L. 1983; amd. Sec. 1, Ch. 23, L. 1985; amd. Sec. 1, Ch. 125, L. 1985; amd. Sec. 1, Ch. 461, L. 1985; amd. Sec. 1, Ch. 234, L. 1987; amd. Sec. 1, Ch. 314, L. 1987; amd. Sec. 95, Ch. 370, L. 1987; amd. Sec. 1, Ch. 618, L. 1989.

Compiler's Comments

1989 Amendment: In definition of base period, in middle of third sentence, inserted "or a similar statute of another state". Amendment effective July 1, 1989.

39-51-202. Employer defined. "Employer" means:

(1) any employing unit whose total annual payroll within either the current or preceding calendar year equals or exceeds the sum of $1,000;

(2) any individual or employing unit which acquired the organization, trade, or business or substantially all of the assets thereof of another which at the time of such acquisition was an employer subject to this chapter;

(3) any individual or employing unit which acquired the organization, trade, or business or substantially all the assets thereof of another employing unit not an employer subject to this chapter and which, if subsequent to such acquisition it were treated as a single unit with such other employing unit, would be an employer under subsection (1) of this section;

(4) any employing unit not an employer by reason of any other subsection of this section for which, within either the current or preceding calendar year, service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions

paid into a state unemployment fund or an employing unit which, as a condition for approval of this chapter for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required pursuant to such act to be an employer under this chapter;

(5) any employing unit which, having become an employer under subsection (1), (2), (3), or (4) has not, under 39-51-1101, ceased to be an employer subject to this chapter; or

(6) for the effective period of its election pursuant to 39-51-1102, any other employing unit which has elected to become fully subject to this chapter.

History: En. Subd. (a) to (m), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 1, Ch. 160, L. 1953; amd. Sec. 9, Ch. 164, L. 1955; amd. Sec. 11, Ch. 171, L. 1957; amd. Sec. 1, Ch. 177, L. 1959; amd. Sec. 1, Ch. 178, L. 1959; amd. Sec. 2, Ch. 84, L. 1965; amd. Sec. 2, Ch. 37, L. 1969; amd. Sec. 1, Ch. 411, L. 1971; amd. Sec. 1, Ch. 159, L. 1973; amd. Sec. 1, Ch. 404, L. 1973; amd. Sec. 3, Ch. 323, L. 1975; amd. Sec. 1, Ch. 523, L. 1977; R.C.M. 1947, 87-148(part); amd. Sec. 37, Ch. 397, L. 1979; amd. Sec. 2, Ch. 125, L. 1985; amd. Sec. 2, Ch. 618, L. 1989.

Compiler's Comments

1989 Amendment: In (1), before "exceeds the sum", inserted "equals or". Amendment effective July 1, 1989.

Cross-References

"Annual payroll" defined, 39-51-201.
"Contributions" defined, 39-51-201.
"Employing unit" defined, 39-51-201.
"Fund" defined, 39-51-201.

39-51-203. Employment defined. (1) "Employment", subject to other provisions of this section, means service by an individual or by an officer of a corporation, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.

(2) (a) The term "employment" includes an individual's entire service performed within or both within and without this state if:

(i) the service is localized in this state; or

(ii) the service is not localized in any state but some of the service is performed in this state and:

(A) the base of operations or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; or

(B) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(b) Service is considered to be localized within a state if:

(i) the service is performed entirely within such state; or

(ii) the service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

(3) Service not covered under subsection (2) of this section and performed entirely without this state with respect to no part of which contributions are required and paid under an unemployment insurance law of any other state or of the federal government is considered to be employment subject to this chapter if the individual performing such services is a resident of this state and the department approves the election of the employing unit for whom such services are performed that the entire service of such individual is considered to be employment subject to this chapter.

(4) Service performed by an individual for wages is considered to be employment subject to this chapter unless and until it is shown to the satisfaction of the department that the individual is an independent contractor.

(5) The term "employment" includes service performed by an individual in the employ of this state or any of its instrumentalities (or in the employ of this state and one or more other states or their instrumentalities) for a hospital or institution of higher education located in this state. The term "employment" includes service performed by all individuals, including without limitations those individuals who work for the state of Montana, its universities, any of its colleges, public schools, components or units thereof, or any local government unit and one or more other states or their instrumentalities or political subdivisions whose services are compensated by salary or wages.

(6) The term "employment" includes service performed by an individual in the employ of a religious, charitable, scientific, literary, or educational organization.

(7) (a) The term "employment" includes the service of an individual who is a citizen of the United States performed outside the United States, except in Canada, in the employ of an American employer, other than service which is considered employment under the provisions of subsection (2) of this section or the parallel provisions of another state's law, if:

(i) the employer's principal place of business in the United States is located in this state;

(ii) the employer has no place of business in the United States, but:

(A) the employer is an individual who is a resident of this state;

(B) the employer is a corporation which is organized under the laws of this state; or

(C) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any other state; or

(iii) none of the criteria of sections (7)(a)(i) and (7)(a)(ii) of this subsection are met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits based on such service under the law of this state.

(b) An "American employer", for purposes of this subsection, means a person who is:

(i) an individual who is a resident of the United States;

(ii) a partnership if two-thirds or more of the partners are residents of the United States;

(iii) a trust if all of the trustees are residents of the United States; or

(iv) a corporation organized under the laws of the United States or of any state.

(8) Agricultural labor exempted under 39-51-204 is considered employment whenever the employing unit pays $20,000 or more in cash to workers for agricultural labor in any quarter in the current or preceding calendar year or employs 10 or more workers in agricultural labor on 20 days in 20 different weeks during the current or preceding calendar year. If an employer, including but not limited to an employing unit providing outfitter and guide services, is otherwise subject to this chapter and has agricultural employment, all employees engaged in agricultural labor must be excluded from coverage under this chapter if the employer:

(a) in any quarter or calendar year, as applicable, does not meet either of the tests relating to the monetary amount or number of employees and days worked, for the subject wages attributable to agricultural labor; and

(b) keeps separate books and records to account for the employment of persons in agricultural labor.

(9) Domestic service exempted under 39-51-204(1)(b) is considered employment whenever the employing unit pays $1,000 or more in cash for domestic service in any quarter during the current or preceding calendar year. If an employer is otherwise subject to this chapter and has domestic service employment, all employees engaged in domestic service must be excluded from coverage under this chapter if the employer:

(a) does not meet the monetary payment test in any quarter or calendar year, as applicable, for the subject wages attributable to domestic service; and

(b) keeps separate books and records to account for the employment of persons in domestic service.

History: En. Subd. (a) to (m), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 1, Ch. 160, L. 1953; amd. Sec. 9, Ch. 164, L. 1955; amd. Sec. 11, Ch. 171, L. 1957; amd. Sec. 1, Ch. 177, L. 1959; amd. Sec. 1, Ch. 178, L. 1959; amd. Sec. 2, Ch. 84, L. 1965; amd. Sec. 2, Ch. 37, L. 1969; amd. Sec. 1, Ch. 411, L. 1971; amd. Sec. 1, Ch. 159, L. 1973; amd. Sec. 1, Ch. 404, L. 1973; amd. Sec. 3, Ch. 323, L. 1975; amd. Sec. 1, Ch. 523, L. 1977; R.C.M. 1947, 87-148(part); amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 38, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 2, Ch. 234, L. 1987; amd. Sec. 2, Ch. 314, L. 1987; amd. Sec. 3, Ch. 618, L. 1989.

Compiler's Comments

1989 Amendment: In (8) substituted second sentence revising definition of employment relating to agricultural labor (see 1989 Session Law for text) for former sentence concerning agricultural wages (see 1987 MCA for former text); and in (9) substituted second sentence revising definition of employment relating to domestic service (see 1989 Session Law for text) for former provision concerning domestic employment (see 1987 MCA for former text). Amendment effective July 1, 1989.

Cross-References

"Benefits" defined, 39-51-201.
"Contributions" defined, 39-51-201.
"Department" defined, 39-51-201.
"Employing unit" defined, 39-51-201.
"Hospital" defined, 39-51-201.
"Institution of higher education" defined, 39-51-201.
"State" defined, 39-51-201.
"Wages" defined, 39-51-201.
"Week" defined, 39-51-201.

39-51-204. Exclusions from definition of employment. (1) The term "employment" does not include:

(a) agricultural labor, except as provided in 39-51-203(8);

(b) domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, except as provided in 39-51-203(9);

(c) service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(d) service performed by an individual in the employ of that individual's son, daughter, or spouse and service performed by a child under the age of 21 in the employ of the child's father or mother;

(e) service performed in the employ of any other state or its political subdivisions or of the United States government or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law shall not be entitled to exemption under this subsection and shall be subject to this chapter the same as state banks, provided that such service is excluded from employment as defined in the Federal Unemployment Tax Act by section 3306(c)(7) of that act;

(f) service with respect to which unemployment insurance is payable under an unemployment insurance system established by an act of congress, provided that the department must enter into agreements with the proper agencies under such act of congress, which agreements shall become effective in the manner prescribed in the Montana Administrative Procedure Act for the adoption of rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this chapter, acquired rights to unemployment insurance under such act of congress or who have, after acquiring potential rights to unemployment insurance under such act of congress, acquired rights to benefits under this chapter;

(g) services performed in the delivery and distribution of newspapers or shopping news from house to house and business establishments by an individual under the age of 18 years, but not including the delivery or distribution to any point or points for subsequent delivery or distribution;

(h) services performed by real estate, securities, and insurance salespeople paid solely by commissions and without guarantee of minimum earnings;

(i) service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or university or by the spouse of such a student if such spouse is advised, at the time such spouse commences to perform such service, that the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university and such employment will not be covered by any program of unemployment insurance;

(j) service performed by an individual who is enrolled at a nonprofit or public educational institution, which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, as a student in a full-time program taken for credit at such institution which combines academic instruction with work experience if such service is an integral part of such program and such institution has so certified to the employer, except that this subsection shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(k) service performed in the employ of a hospital if such service is performed by a patient of the hospital;

(l) services performed by a cosmetologist who is licensed under Title 37, chapter 31, or a barber who is licensed under Title 37, chapter 30, and who has acknowledged in writing that he is not covered by unemployment insurance and workers' compensation and who contracts with a cosmetological establishment as defined in 37-31-101 or a barbershop as defined in 37-30-101, which contract shall show the cosmetologist or barber is free from all control and direction of the owner in the contract and in fact; receives payment for services from his or her individual clientele; leases, rents, or furnishes all of his or her own equipment, skills, or knowledge; and whose contract gives rise to an action for breach of contract in the event of contract termination (the existence of a single license for the cosmetological establishment or barbershop shall not be construed as a lack of freedom from control or direction under this subsection);

(m) casual labor not in the course of an employer's trade or business performed in any calendar quarter, unless the cash remuneration paid for such service is $50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. "Regularly employed" means the services are performed during at least 24 days in the same quarter.

(n) services performed for the installation of floor coverings if the installer:

(i) bids or negotiates a contract price based upon work performed by the yard or by the job;

(ii) is paid upon completion of an agreed upon portion of the job or after the job is completed;

(iii) may perform services for anyone without limitation;

(iv) may accept or reject any job;

(v) furnishes substantially all tools and equipment necessary to provide the services; and

(vi) works under a written contract that:

(A) gives rise to a breach of contract action if the installer or any other party fails to perform the contract obligations;

(B) states the installer is not covered by unemployment insurance; and

(C) requires the installer to provide a current workers' compensation policy or to obtain an exemption from workers' compensation requirements.

(2) "Employment" does not include elected public officials.

(3) For the purposes of 39-51-203(6), the term "employment" does not apply to service performed:

(a) in the employ of a church or convention or association of churches or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(b) by a duly ordained, commissioned, or licensed minister of a church in the exercise of the church's ministry or by a member of a religious order in the exercise of duties required by such order;

(c) in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who, because of their impaired physical or mental capacity, cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work;

(d) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency or any agency of a state or political subdivision thereof by an individual receiving such work relief or work training; or

(e) for a state prison or other state correctional or custodial institution by an inmate of that institution.

History: En. Subd. (a) to (m), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 1, Ch. 160, L. 1953; amd. Sec. 9, Ch. 164, L. 1955; amd. Sec. 11, Ch. 171, L. 1957; amd. Sec. 1, Ch. 177, L. 1959; amd. Sec. 1, Ch. 178, L. 1959; amd. Sec. 2, Ch. 84, L. 1965; amd. Sec. 2, Ch. 37, L. 1969; amd. Sec. 1, Ch. 411, L. 1971; amd. Sec. 1, Ch. 159, L. 1973; amd. Sec. 1, Ch. 404, L. 1973; amd. Sec. 3, Ch. 323, L. 1975; amd. Sec. 1, Ch. 523, L. 1977; R.C.M. 1947, 87-148(part); amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 67, L. 1979; amd. Sec. 39, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349,

L. 1981; amd. Sec. 1, Ch. 357, L. 1983; amd. Sec. 3, Ch. 125, L. 1985; amd. Sec. 3, Ch. 234, L. 1987; amd. Sec. 1, Ch. 526, L. 1987; amd. Sec. 4, Ch. 618, L. 1989.

Compiler's Comments

1989 Amendment: Inserted (1)(n) excluding services of installers of floor coverings under certain circumstances. Amendment effective July 1, 1989.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

"Benefits" defined, 39-51-201.

"Calendar quarter" defined, 39-51-201.

"Department" defined, 39-51-201.

"Hospital" defined, 39-51-201.

"Institution of higher education" defined, 39-51-201.

"State" defined, 39-51-201.

39-51-205. Agricultural labor defined. (1) The term "agricultural labor" includes all services performed prior to January 1, 1972, which was agricultural labor as defined in this section prior to such date and remunerated services performed after December 31, 1971:

(a) on a farm, in the employ of any person in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

(b) in the employ of the owner or tenant or other operator of a farm in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment or in salvaging timber or clearing land of brush and other debris left by a hurricane if the major part of such service is performed on a farm;

(c) in connection with the production or harvesting of any commodity commonly known as agricultural commodities or in connection with the hatching of poultry or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes, except where such ditches, canals, reservoirs, or waterways are owned and operated by government entities;

(d) in the employ of the operator of a farm or a group of operators of farms or a cooperative organization of which such operators are members in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market in its unmanufactured state any agricultural or horticultural commodity, but only if such operator or operators produced more than one-half of the commodity with respect to which such service is performed.

(2) The provisions of subsections (1)(a), (1)(b), (1)(c), and (1)(d) of this section shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption or on a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

(3) As used in this section, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, and truck farms, plantations, ranches, nurseries, ranges, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities and orchards.

History: En. Subd. (a) to (m), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 1, Ch. 160, L. 1953; amd.

Sec. 9, Ch. 164, L. 1955; amd. Sec. 11, Ch. 171, L. 1957; amd. Sec. 1, Ch. 177, L. 1959; amd. Sec. 1, Ch. 178, L. 1959; amd. Sec. 2, Ch. 84, L. 1965; amd. Sec. 2, Ch. 37, L. 1969; amd. Sec. 1, Ch. 411, L. 1971; amd. Sec. 1, Ch. 159, L. 1973; amd. Sec. 1, Ch. 404, L. 1973; amd. Sec. 3, Ch. 323, L. 1975; amd. Sec. 1, Ch. 523, L. 1977; R.C.M. 1947, 87-148(part).

39-51-206. Agricultural labor — who treated as employer of member of a crew furnished by a crew leader. (1) For the purposes of 39-51-203, any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of such crew leader if:

(a) such crew leader holds a valid certificate of registration under the Migrant and Seasonal Agricultural Worker Protection Act, as amended (29 U.S.C. 1801, et seq.); or

(b) (i) substantially all the members of such crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or any other mechanized equipment which is provided by such crew leader; and

(ii) such individual is not an employee of such other person within the meaning of 39-51-202(1), 39-51-203(8), or 39-51-203(9).

(2) In the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of such crew leader under subsection (1):

(a) such other person and not the crew leader shall be treated as the employer of such individual; and

(b) such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader, either on his own behalf or on behalf of such other person, for the service in agricultural labor performed for such other person.

(3) The term "crew leader" means an individual who:

(a) furnishes individuals to perform service in agricultural labor for any other person;

(b) pays, either on his own behalf or on behalf of such other person, the individuals so furnished by him for the service in agricultural labor performed by them; and

(c) has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person.

History: En. Subd. (a) to (m), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 1, Ch. 160, L. 1953; amd. Sec. 9, Ch. 164, L. 1955; amd. Sec. 11, Ch. 171, L. 1957; amd. Sec. 1, Ch. 177, L. 1959; amd. Sec. 1, Ch. 178, L. 1959; amd. Sec. 2, Ch. 84, L. 1965; amd. Sec. 2, Ch. 37, L. 1969; amd. Sec. 1, Ch. 411, L. 1971; amd. Sec. 1, Ch. 159, L. 1973; amd. Sec. 1, Ch. 404, L. 1973; amd. Sec. 3, Ch. 323, L. 1975; amd. Sec. 1, Ch. 523, L. 1977; R.C.M. 1947, 87-148(part); amd. Sec. 5, Ch. 618, L. 1989.

Compiler's Comments

1989 Amendment: In (1)(a) substituted citation to Migrant and Seasonal Agricultural Worker Protection Act, as amended, for citation to Farm Labor Contractor Registration Act of 1963; and made minor changes in form. Amendment effective July 1, 1989.

Part 3

General Administrative Provisions

39-51-301. Administration — duties and powers of department. (1) It shall be the duty of the department to administer this chapter and it shall have power and authority to adopt, amend, or rescind such rules, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as it deems necessary or suitable to that end.

(2) The department shall determine its own organization and methods of procedure in accordance with the provisions of this chapter and shall have an official seal, which shall be judicially noticed.

(3) Whenever the department believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly so inform the governor and the legislature and make recommendations with respect thereto.

(4) The department and the board may issue subpoenas and compel testimony and the production of evidence, including books and records, in regard to any investigation or proceeding under this chapter.

History: En. Subd. (a), Sec. 11, Ch. 137, L. 1937; amd. Sec. 6, Ch. 156, L. 1961; amd. Sec. 40, Ch. 93, L. 1969; amd. Sec. 11, Ch. 368, L. 1975; R.C.M. 1947, 87-120; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 11, Ch. 125, L. 1983; amd. Sec. 4, Ch. 125, L. 1985.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

Civil rules on subpoenas, Rule 45, M.R.Civ.P. (see Title 25, ch. 20).

"Benefits" defined, 39-51-201.

"Contributions" defined, 39-51-201.

"Department" defined, 39-51-201.

"Fund" defined, 39-51-201.

39-51-302. Administrative rules. The department may adopt procedural and substantive rules necessary to implement this chapter.

History: En. Subd. (b), Sec. 11, Ch. 137, L. 1937; amd. Sec. 12, Ch. 368, L. 1975; R.C.M. 1947, 87-121; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 5, Ch. 125, L. 1985.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

"Department" defined, 39-51-201.

39-51-303. Publication and distribution of materials. The department shall cause to be printed for distribution to the public the text of this chapter, the department's regulations and general and special rules, and any other material the department considers relevant and suitable and shall furnish the same to any person upon application.

History: En. Subd. (c), Sec. 11, Ch. 137, L. 1937; amd. Sec. 13, Ch. 368, L. 1975; R.C.M. 1947, 87-122; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 370, L. 1989.

Compiler's Comments

1989 Amendment: After "special rules" deleted "annual reports to the governor"; and made minor changes in phraseology.

Cross-References

"Department" defined, 39-51-201.

39-51-304. Personnel. The department shall hire personnel to administer this chapter in accordance with merit system principles adopted by the department of administration.

History: En. Subd. (d), Sec. 11, Ch. 137, L. 1937; amd. Sec. 14, Ch. 368, L. 1975; R.C.M. 1947, 87-123; amd. Sec. 40, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 6, Ch. 125, L. 1985.

Cross-References

"Department" defined, 39-51-201.

39-51-305. Department to appoint appeals referees. To hear and decide disputed claims, the department shall appoint such impartial salaried appeals referees as are necessary for the proper administration of this chapter in accordance with 39-51-304. No person shall participate on behalf of the department in any case in which he is an interested party. The department may designate alternates to serve in the absence or disqualification of an appeals referee.

History: En. Sec. 6 (a) to (e), Ch. 137, L. 1937; amd. Sec. 2, Ch. 171, L. 1957; amd. Sec. 1, Ch. 262, L. 1973; amd. Sec. 3, Ch. 368, L. 1975; amd. Sec. 1, Ch. 20, L. 1977; R.C.M. 1947, 87-107(d); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 7, Ch. 125, L. 1985.

Cross-References

"Department" defined, 39-51-201.

39-51-306. Repealed. Sec. 5, Ch. 349, L. 1981.

History: En. Subd. (b), Sec. 10, Ch. 137, L. 1937; amd. Sec. 2, Ch. 132, L. 1969; amd. Sec. 10, Ch. 368, L. 1975; R.C.M. 1947, 87-118.

39-51-307. Department to create employment service. (1) The department shall establish and maintain free public employment offices in such number and in such places as may be necessary for the proper administration of this chapter and for the purpose of performing such duties as are within the purview of the act of congress entitled, "An act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system, and for other purposes", approved June 6, 1933 (48 Stat. 113; U.S.C. Title 29, Sec. 49 (c)), as amended.

(2) The department shall be charged with the duty to cooperate with any official or agency of the United States having power or duties under the provisions of the act of congress, as amended, and to do and perform all things necessary to secure to this state the benefits of the act of congress, as amended, in the promotion and maintenance of a system of public employment offices.

(3) The provisions of the act of congress, as amended, are hereby accepted by this state in conformity with section 4 of said act, and this state will observe and comply with the requirements thereof. The department is hereby designated and constituted the agency of this state for the purpose of said act.

(4) For the purpose of establishing and maintaining free public employment offices, the department is authorized to enter into agreements with any political subdivisions of this state or with any private, nonprofit organization and as a part of any such agreement the department may accept money, services, or quarters as a contribution to the employment service account.

History: En. Sec. 12, Ch. 137, L. 1937; amd. Sec. 6, Ch. 164, L. 1941; amd. Sec. 21, Ch. 368, L. 1975; R.C.M. 1947, 87-132; amd. Sec. 2, Ch. 349, L. 1981.

Cross-References

"Department" defined, 39-51-201.

39-51-308. Acquisition and disposition of property by department. (1) Subject to the approval of the department of administration, the department may purchase such equipment, supplies, and real property as it may deem necessary and proper. The title to any real property purchased shall be taken in the name of the state of Montana.

(2) Subject to the approval of the department of administration, the department may sell any equipment, supplies, or real property previously

acquired by it, and the proceeds of such sale shall be deposited into the unemployment insurance administration fund.

(3) In the event the duties or any part thereof of the department shall be at any time in the future surrendered to or taken over by the federal government or any agency thereof, the department, with the approval of the department of administration, may lease such equipment and real property to the federal government or such agency, but the title thereto shall remain in the state of Montana.

History: En. as Sec. 11-A of Ch. 137, L. 1937 by Sec. 6, Ch. 233, L. 1943; amd. Sec. 8, Ch. 171, L. 1957; amd. Sec. 19, Ch. 368, L. 1975; amd. Sec. 17, Ch. 343, L. 1977; R.C.M. 1947, 87-130; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Cross-References

Department of Administration, Title 2, ch. 15, part 10.

Public Contracts, Title 18.

"Department" defined, 39-51-201.

"Fund" defined, 39-51-201.

39-51-309. Representation of department and state in court. (1) In any civil action to enforce the provisions of this chapter the department and the state may be represented by any qualified attorney who is employed by the department and is designated by it for this purpose or, at the department's or board's request, by the attorney general.

(2) All criminal actions for violation of any provision of this chapter or of any rules issued pursuant thereto shall be prosecuted by the attorney general of the state or, at his request and under his direction, by the county attorney of the county wherein the crime was committed.

History: En. Sec. 17, Ch. 137, L. 1937; amd. Sec. 8, Ch. 164, L. 1955; amd. Sec. 31, Ch. 368, L. 1975; R.C.M. 1947, 87-146; amd. Sec. 41, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Cross-References

Duties of Attorney General, 2-15-501.

"Department" defined, 39-51-201.

39-51-310. Function of board. The board shall act in a quasi-judicial capacity for the hearing of disputes concerning the administration of Montana's unemployment insurance laws and disputes arising under Title 39, chapter 71, not concerning benefits, regarding whether an individual is an employee or an independent contractor as defined in that chapter.

History: En. 82A-1008 by Sec. 1, Ch. 272, L. 1971; R.C.M. 1947, 82A-1008(4); amd. Sec. 3, Ch. 314, L. 1987.

Cross-References

Quasi-judicial boards, 2-15-124.

"Board" defined, 39-51-201.

Part 4

Financial Administration

39-51-401. Unemployment insurance fund — establishment and control. There is hereby established separate and apart from all public money or funds of this state a fund in the expendable trust fund type known as the unemployment insurance fund, which shall be administered by the department exclusively for the purposes of this chapter. Any reference to the unemployment insurance fund in this code means the unemployment insurance expendable trust fund. All money in the fund shall be mingled and undivided. This fund shall consist of:

(1) all contributions collected under this chapter and payments made in lieu of contributions as provided in 39-51-1124 through 39-51-1126;

(2) interest earned upon any money in the fund;

(3) any property or securities acquired through the use of money belonging to the fund;

(4) all earnings of such property or securities; and

(5) all money credited to this state's account in the unemployment trust fund pursuant to section 903 of the Social Security Act, as amended.

History: En. Subd. (a), Sec. 9, Ch. 137, L. 1937; amd. Sec. 2, Ch. 190, L. 1945; amd. Sec. 4, Ch. 171, L. 1957; amd. Sec. 206, Ch. 147, L. 1963; amd. Sec. 1, Ch. 88, L. 1971; amd. Sec. 5, Ch. 368, L. 1975; R.C.M. 1947, 87-111; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 42, Ch. 397, L. 1979; amd. Sec. 17, Ch. 685, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 21, Ch. 281, L. 1983.

Cross-References

State treasury fund structure, Title 17, ch. 2.
"Contributions" defined, 39-51-201.
"Department" defined, 39-51-201.
"Fund" defined, 39-51-201.

39-51-402. Unemployment insurance fund — custodian — accounts and deposits. (1) The commissioner of labor and industry is the ex officio treasurer and custodian of the unemployment insurance fund and shall administer such fund in accordance with this chapter. He shall maintain within the fund three separate accounts:

(a) a clearing account;

(b) an unemployment trust fund account; and

(c) a benefit account.

(2) All money payable to the unemployment insurance fund, upon receipt by the department, must be immediately deposited in the clearing account. Refunds payable pursuant to 39-51-1110 may be paid from the clearing account. After clearance thereof, all other money in the clearing account must be immediately deposited with the secretary of the treasury of the United States to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to section 904 of the Social Security Act, as amended.

(3) The benefit account consists of all money requisitioned for the payment of benefits from this state's account in the unemployment trust fund.

(4) Except as herein otherwise provided, money in the clearing and benefit accounts may be deposited in any bank or public depository in which general funds of the state may be deposited, but no public deposit insurance charge or premium may be paid out of the unemployment insurance fund.

History: En. Subd. (b), Sec. 9, Ch. 137, L. 1937; amd. Sec. 5, Ch. 171, L. 1957; amd. Sec. 207, Ch. 147, L. 1963; amd. Sec. 6, Ch. 368, L. 1975; R.C.M. 1947, 87-112; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 43, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 22, Ch. 281, L. 1983; amd. Sec. 8, Ch. 125, L. 1985.

Cross-References

Ex officio State Treasurer, 2-15-1002.
"Benefits" defined, 39-51-201.
"Department" defined, 39-51-201.
"Fund" defined, 39-51-201.

39-51-403. Money to be requisitioned from unemployment trust fund solely for payment of benefits — exception. (1) Money shall be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and in accordance with regulations prescribed by the department, except that money credited to this state's account pursuant to section 903 of the Social Security Act, as amended, may also be withdrawn for the payment of expenses for the administration of this chapter and of public employment offices, as provided by this chapter.

(2) The department shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to this state account therein, as it deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof, the treasurer shall deposit such money in the benefit account and shall issue his warrants for the payment of benefits solely from such benefit account.

(3) Expenditures of such money in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody.

(4) Any balance of money requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for and may be utilized for the payment of benefits during succeeding periods or, in the discretion of the department, shall be redeposited with the secretary of the treasury of the United States to the credit of this state's account in the unemployment trust fund, as provided in 39-51-402.

History: En. Subd. (c), Sec. 9, Ch. 137, L. 1937; amd. Sec. 6, Ch. 171, L. 1957; amd. Sec. 7, Ch. 368, L. 1975; R.C.M. 1947, 87-113(a); amd. Sec. 1, Ch. 349, L. 1981.

Cross-References

"Benefits" defined, 39-51-201.

"Department" defined, 39-51-201.

"Fund" defined, 39-51-201.

39-51-404. Administrative expenses. (1) Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States pursuant to section 903 of the Social Security Act, as amended, may be requisitioned and used for the payment of expenses incurred for the administration of this chapter pursuant to a specific appropriation by the legislature, provided that the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which:

(a) specifies the purposes for which such money is appropriated and the amounts appropriated therefor;

(b) limits the period within which such money may be expended to a period ending not more than 2 years after the date of the enactment of the appropriation law; and

(c) limits the amount which may be used during any 12-month period beginning on July 1 and ending on the next June 30 to an amount which does not exceed the amount by which the aggregate of the amounts credited to the account of this state pursuant to section 903 of the Social Security Act, as amended, during the same 12-month period and the 34 preceding 12-month periods exceeds the aggregate of the amounts used pursuant to this section and charged against the amounts credited to the account of this state during any of such 35 12-month periods.

(2) For the purposes of this section, amounts used during any such 12-month period shall be charged against equivalent amounts which were first credited and which are not already so charged, except that no amount used for administration during any such 12-month period may be charged against

any amount credited during such a 12-month period earlier than the 34th preceding such period. Money requisitioned for the payment of expenses of administration pursuant to this section shall be deposited in the unemployment insurance administration account but, until expended, shall remain a part of the unemployment insurance fund.

(3) The department shall maintain a separate record of the deposit, obligation, expenditure, and return of funds so deposited. If any money so deposited is for any reason not to be expended for the purpose for which it was appropriated or if it remains unexpended at the end of the period specified by the law appropriating such money, it shall be withdrawn and returned to the secretary of the treasury of the United States for credit to this state's account in the unemployment trust fund.

(4) Beginning with the third quarter of 1983, an assessment equal to .1% of all taxable wages provided for in 39-51-1108 and .05% of total wages paid by employers not covered by an experience rating must be levied against and paid by all employers and may be used by the department for administrative purposes. All such assessments must be deposited in the unemployment insurance administration account provided for in 39-51-406 and used as appropriated by the legislature. Any assessments deposited to the unemployment insurance administration account, including investment income, that are not appropriated by the legislature must be transferred to the unemployment trust fund account provided for in 39-51-402.

History: En. Subd. (c), Sec. 9, Ch. 137, L. 1937; amd. Sec. 6, Ch. 171, L. 1957; amd. Sec. 7, Ch. 368, L. 1975; R.C.M. 1947, 87-113(b); amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 251, L. 1983; amd. Sec. 23, Ch. 281, L. 1983; (4)En. Sec. 1, Ch. 304, L. 1983; amd. Sec. 2, Ch. 461, L. 1985; amd. Sec. 1, Ch. 422, L. 1989.

Compiler's Comments

1989 Amendment: In last sentence of (4), after "assessments deposited to the unemployment insurance administration account", inserted "including investment income".

Cross-References

"Department" defined, 39-51-201.

"Fund" defined, 39-51-201.

39-51-405. Signatures required on warrants. All warrants issued by the treasurer for payment pursuant to 39-51-403 or 39-51-404 shall bear the signature of the treasurer and the countersignature of a member of the department or its duly authorized agent for that purpose.

History: En. Subd. (c), Sec. 9, Ch. 137, L. 1937; amd. Sec. 6, Ch. 171, L. 1957; amd. Sec. 7, Ch. 368, L. 1975; R.C.M. 1947, 87-113(c); amd. Sec. 1, Ch. 349, L. 1981.

Cross-References

Warrants for payment of state funds, 17-8-301.

"Department" defined, 39-51-201.

39-51-406. Unemployment insurance administration account. (1) There is hereby created an account in the federal special revenue fund to be known as the unemployment insurance administration account. All moneys which are deposited, appropriated, or paid into this account are hereby appropriated and made available to the department. All moneys in the account shall be expended solely for the purpose of defraying the costs of administration of this chapter and costs of administration of such other legislation as shall be specifically delegated to the department for administration by the legislature.

(2) All moneys received and deposited in said account for administration expense from the United States or any agency thereof pursuant to section 302, Title III, of the Social Security Act shall be expended solely for the purpose and in the amounts found necessary by the secretary of labor for the proper and efficient administration of this chapter.

(3) The account shall consist of:

(a) all moneys received from the United States or any agency thereof pursuant to section 302, Title III, of the Social Security Act, as amended;

(b) all moneys appropriated by the state from the general fund for the purpose of administering this chapter; and

(c) all moneys, trust funds, supplies, facilities, or services furnished, deposited, paid, and received from:

(i) the United States or any agency thereof;

(ii) this state or any agency thereof;

(iii) any other state or any of its agencies;

(iv) political subdivisions of the state; or

(v) any other source for administrative expense and purpose.

(4) Notwithstanding any provisions of this section, all money requisitioned and deposited in this account pursuant to 39-51-403 through 39-51-405 shall remain part of the unemployment insurance fund and shall be used only in accordance with the conditions specified in 39-51-403 through 39-51-405.

(5) All moneys in this account shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other accounts. Any balance in this account shall not lapse at any time but shall be continuously available to the department for the expenditure consistent with this chapter.

(6) The state treasurer shall give a separate and additional bond conditioned upon the faithful performance of his duties in connection with the unemployment insurance administration account in an amount to be fixed by the department and in a form prescribed by law or approved by the attorney general. The premiums for such bond and the premiums for the bond given by the treasurer for the unemployment insurance fund under 39-51-402 shall be paid from the money in the unemployment insurance administration account.

(7) Any reference to the unemployment insurance administration fund in this code shall be taken to mean the unemployment insurance administration account in the federal special revenue fund.

History: En. Subd. (a), Sec. 13, Ch. 137, L. 1937; amd. Sec. 7, Ch. 164, L. 1941; amd. Sec. 4, Ch. 190, L. 1945; amd. Sec. 4, Ch. 164, L. 1955; amd. Sec. 9, Ch. 171, L. 1957; amd. Sec. 208, Ch. 147, L. 1963; amd. Sec. 22, Ch. 368, L. 1975; R.C.M. 1947, 87-133; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 2, Ch. 277, L. 1983; amd. Sec. 24, Ch. 281, L. 1983; amd. Sec. 1, Ch. 369, L. 1983.

Cross-References

State treasury fund structure, Title 17, ch. 2.

Guaranty, indemnity, and suretyship, Title 28, ch. 11.

"Contributions" defined, 39-51-201.

"Department" defined, 39-51-201.

"Fund" defined, 39-51-201.

"State" defined, 39-51-201.

39-51-407. Reimbursement of fund by state. This state recognizes its obligation to replace, and hereby pledges the faith of this state that funds will be provided in the future and applied to the replacement of any of the money received from the United States or any agency thereof under Title III of the

Social Security Act, any unencumbered balances in the unemployment insurance administration account, any money granted to this state pursuant to the provisions of the Wagner-Peyser Act, and any money made available by the state or its political subdivisions and matched by such money granted to this state pursuant to the provisions of the Wagner-Peyser Act which the secretary of labor finds have, because of any action or contingency, been lost or have been expended for purposes other than or in amounts in excess of those found necessary by the secretary of labor for the proper administration of this chapter. Such money shall be promptly supplied by money furnished by the state of Montana or any of its subdivisions for the use of the department and used only for purposes approved by the secretary of labor. The department shall, if necessary, promptly report to the governor and the governor to the legislature the amount required for such replacement.

History: En. as Subd. (b) of Sec. 13, Ch. 137, L. 1937 by Sec. 7, Ch. 164, L. 1941; amd. Sec. 5, Ch. 164, L. 1955; amd. Sec. 23, Ch. 368, L. 1975; R.C.M. 1947, 87-134; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 25, Ch. 281, L. 1983; amd. Sec. 4, Ch. 234, L. 1987.

Cross-References

"Department" defined, 39-51-201.

"Fund" defined, 39-51-201.

39-51-408. Advances from federal unemployment trust fund. (1) The department is authorized to apply for advances on behalf of the state of Montana from its account in the federal unemployment trust fund and to accept responsibility for repayment of such advances in accordance with the conditions specified by congress.

(2) (a) The interest cost, if any, from such advances must be assessed against employers subject to experience rating. Interest cost may not be assessed against state or local government employers covered by 39-51-1212 or against nonprofit organizations making payments in lieu of contributions pursuant to 39-51-1124.

(b) An assessment must be made beginning with the calendar year following the calendar year in which it became necessary to apply for an advance from the federal unemployment trust fund and after the interest charges on the advance have been determined. The rate will be determined by the department based upon the interest charges. This rate must be applied to the employer's taxable wages and be submitted in the same manner as regular contributions but as a separate payment.

(c) The amount received must be deposited in the unemployment insurance account and used to pay interest costs. Any surplus must be used to pay benefits. The department shall maintain separate records of deposits, obligations, and expenditures of all money collected pursuant to this section.

History: En. Sec. 1, Ch. 273, L. 1983.

Part 5

Governmental Cooperation

39-51-501. State-federal cooperation. (1) In the administration of this chapter, the department shall:

(a) cooperate to the fullest extent consistent with the provisions of this chapter with the secretary of labor, pursuant to the provisions of the Social Security Act, as amended;

(b) make such reports in such form and containing such information as the secretary of labor may from time to time require and shall comply with such provisions as the secretary of labor may from time to time find necessary to assure the correctness and verification of such reports; and

(c) comply with the regulations prescribed by the secretary of labor governing the expenditures of such sums as may be allotted and paid to this state under Title III of the Social Security Act, as amended, for the purpose of assisting in the administration of this chapter.

(2) The department shall cooperate with the secretary of labor in the administration of any act of congress establishing unemployment insurance benefits or similar benefits for federal employees and veterans or ex-service personnel of the armed forces of the United States and shall do so in such manner as may be deemed advisable and expedient in order to carry out the purpose of this chapter.

(3) The department is hereby authorized and empowered to perform any and all acts, including the execution of agreements and contracts which may be required under and pursuant to any act passed by the congress of the United States, authorizing the extension of unemployment insurance benefits by federal law if the department in its discretion deems it advisable to perform such acts.

(4) Upon request therefor, the department shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under this chapter.

History: En. Subd. (i), Sec. 11, Ch. 137, L. 1937; amd. Sec. 7, Ch. 171, L. 1957; amd. Sec. 7, Ch. 156, L. 1961; amd. Sec. 17, Ch. 368, L. 1975; R.C.M. 1947, 87-128; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Cross-References

"Benefits" defined, 39-51-201.

"Department" defined, 39-51-201.

39-51-502. Cooperation with other agencies. (1) The department shall afford reasonable cooperation with any government agency charged with war effort or postwar planning responsibilities or with the administration of any system of unemployment allowances or unemployment assistance or of any program designed to prevent or relieve unemployment.

(2) The department may make and may cooperate with other appropriate state agencies in making studies as to the practicability and probable cost of possible new state-administered social security programs and the relative desirability of state rather than national action in any such field.

(3) The department shall fully cooperate with the agencies of other states and shall make every proper effort within its means to oppose and prevent any further action which would in its judgment tend to effect complete or substantial federalization of state unemployment insurance funds or state unemployment insurance and employment security programs or any part of the social security program.

History: En. as Sec. 11-B of Ch. 137, L. 1937 by Sec. 6, Ch. 233, L. 1943; amd. Sec. 20, Ch. 368, L. 1975; R.C.M. 1947, 87-131; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Cross-References
"Department" defined, 39-51-201.
"State" defined, 39-51-201.

39-51-503. Agreements with railroad retirement board. The department is hereby authorized to cooperate with and enter into agreements with the railroad retirement board with respect to establishment, maintenance, and use of employment service facilities and to make available to the railroad retirement board the records of the department relating to employer's status and contributions received from employers covered by the Railroad Unemployment Insurance Act, together with employee wage records and such other data as the railroad retirement board may deem necessary or desirable for the administration of the Railroad Unemployment Insurance Act (52 Stat. 1094). Any money received by the department from the railroad retirement board or any other governmental agency with respect to the establishment, maintenance, and use of employment service facilities shall be paid into and credited the proper division of the unemployment insurance administration fund set up and established under 39-51-406 and 39-51-407.

History: En. Sec. 2, Ch. 167, L. 1939; amd. Sec. 9, Ch. 368, L. 1975; R.C.M. 1947, 87-116; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 3, Ch. 349, L. 1981.

Cross-References
"Department" defined, 39-51-201.

39-51-504. Reciprocal benefit arrangements. (1) The department is hereby authorized to enter into arrangements with the appropriate agencies of other states or the federal government whereby individuals performing services in this and other states for a single employing unit under circumstances not specifically provided for in this chapter or under similar provisions of the unemployment insurance laws of such other states shall be deemed to be engaged in employment performed entirely within this state or within one of such other states and whereby potential rights to benefits accumulated under the unemployment insurance laws of several states or under such a law of the federal government or both may constitute the basis for the payment of benefits through a single appropriate agency under terms which the department finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund.

(2) The department shall participate in any arrangements, approved by the U.S. secretary of labor, with the appropriate agencies of the other states or of the federal government whereby wages or services upon the basis of which an individual may become entitled to benefits under the unemployment insurance law of another state or of the federal government shall be deemed to be wages for employment by employers for benefit purposes, provided that:

(a) in any instance involving the combining of an individual's wages and employment covered under two or more state unemployment insurance laws, that the base period of a single state law will be used;

(b) such combining of wages will not involve the duplicate use of such wage credits; and

(c) such other state agency or agency of the federal government has agreed to reimburse the unemployment insurance fund for such portion of benefits paid under this chapter upon the basis of such wages or services as the department finds will be fair and reasonable as to all affected interests, and whereby the department will reimburse other state or federal agencies charged with the administration of unemployment insurance laws with such reasonable portion of benefits paid under the law of any such other states or of the federal government upon the basis of employment or wages for employment by employers as the department finds will be fair and reasonable to all affected interests. Reimbursements so payable shall be deemed to be benefits for the purposes of this chapter.

(3) The department is hereby authorized to make to other state or federal agencies reimbursements from or to the unemployment insurance fund in accordance with arrangements made pursuant to this section.

History: En. Subd. (j), Sec. 11, Ch. 137, L. 1937; amd. Sec. 3, Ch. 190, L. 1945; amd. Sec. 1, Ch. 91, L. 1971; amd. Sec. 18, Ch. 368, L. 1975; R.C.M. 1947, 87-129; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Cross-References

"Base period" defined, 39-51-201.
"Benefits" defined, 39-51-201.
"Department" defined, 39-51-201.
"Employing unit" defined, 39-51-201.
"Fund" defined, 39-51-201.
"State" defined, 39-51-201.
"Wages" defined, 39-51-201.

Part 6

Records and Reports

39-51-601. Department to maintain wage record. The department shall maintain a record of the wages paid to an individual in accordance with wages earned by him for employment by employers during each quarter.

History: En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 169, L. 1971; amd. Sec. 1, Ch. 394, L. 1973; amd. Sec. 1, Ch. 400, L. 1975; amd. Sec. 1, Ch. 528, L. 1977; R.C.M. 1947, 87-103(f); amd. Sec. 1, Ch. 349, L. 1981.

Cross-References

"Department" defined, 39-51-201.
"Wages" defined, 39-51-201.

39-51-602. Method to be used by department in keeping wage records. Wage records kept by the department for the purposes of this chapter shall be kept on the basis of wages paid.

History: En. Subd. (n) to (r), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 6, Ch. 190, L. 1945; amd. Sec. 3, Ch. 238, L. 1955; amd. Sec. 12, Ch. 171, L. 1957; amd. Sec. 11, Ch. 156, L. 1961; amd. Sec. 4, Ch. 269, L. 1963; amd. Sec. 1, Ch. 200, L. 1969; amd. Sec. 33, Ch. 368, L. 1975; amd. Sec. 1, Ch. 115, L. 1977; R.C.M. 1947, 87-149(part); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 6, Ch. 618, L. 1989.

Compiler's Comments

1989 Amendment: At beginning, deleted language that provided wage records kept prior to January 1, 1941, must be kept on basis of wages payable. Amendment effective July 1, 1989.

Cross-References

"Department" defined, 39-51-201.
"Wages" defined, 39-51-201.

39-51-603. Employing unit to keep records and make reports. (1) Each employing unit shall keep true and accurate work records containing such information as the department may prescribe. Those records shall be open to inspection and shall be subject to being copied by the department or its authorized representative at any reasonable time and as often as may be necessary.

(2) The department and the chairman of any appeal tribunal may require from any employing unit any sworn or unsworn reports with respect to persons employed by it which the department considers necessary to the effective administration of this chapter.

(3) Information thus obtained or obtained from any individual under this chapter shall, except to the individual claimant to the extent necessary for the proper presentation of a claim, be held confidential and shall not be published or be open to public inspection, except to public employees in the performance of their public duties, in any manner revealing the individual's or employing unit's identity, but any claimant or his legal representative at a hearing before the board or appeal tribunal shall be supplied with information from the records to the extent necessary for the proper presentation of his claim.

(4) Any employee or member of the department who violates any provision of this section shall be fined not less than $20 or more than $200 or imprisoned for not longer than 90 days or both.

History: En. Subd. (e), Sec. 11, Ch. 137, L. 1937; amd. Sec. 1, Ch. 144, L. 1974; amd. Sec. 15, Ch. 368, L. 1975; R.C.M. 1947, 87-124; amd. Sec. 1, Ch. 349, L. 1981.

Cross-References
"Board" defined, 39-51-201
"Department" defined, 39-51-201.
"Employing unit" defined, 39-51-201.

Parts 7 through 10 reserved

Part 11

Employer Contributions

39-51-1101. Commencement and termination of coverage under chapter. (1) Any employing unit which is or becomes an employer subject to this chapter within any calendar year shall be subject to this chapter during the whole of such calendar year, except that this subsection shall not apply to an employing unit electing coverage as provided for in 39-51-1102.

(2) Except as otherwise provided in 39-51-1102, an employing unit shall cease to be an employer subject to this chapter only as of January 1 of any calendar year only if it files with the department prior to the last day of February of such year a written application for termination of coverage and the department finds that the total wages payable for employment by said employer in the preceding calendar year did not exceed $1,000. For the purpose of this subsection, the two or more employing units mentioned in subsection (2) or (3) of 39-51-202 shall be treated as a single employing unit.

History: En. Sec. 8, Ch. 137, L. 1937; amd. Sec. 4, Ch. 137, L. 1939; amd. Sec. 5, Ch. 164, L. 1941; amd. Sec. 1, Ch. 37, L. 1969; amd. Sec. 1, Ch. 103, L. 1971; amd. Sec. 1, Ch. 181, L. 1973; amd. Sec. 2, Ch. 323, L. 1975; R.C.M. 1947, 87-110(a), (b); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 5, Ch. 234, L. 1987.

Cross-References
"Department" defined, 39-51-201.
"Employing unit" defined, 39-51-201.
"Wages" defined, 39-51-201.

39-51-1102. Election by employing units not otherwise subject to chapter. An employing unit not otherwise subject to this chapter or any employing unit for which services are performed that do not constitute employment as defined in this chapter may file with the department a written election that all such services performed by individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all purposes of this chapter for not less than 2 calendar years. Upon the written approval of such election by the department, such services shall be deemed to constitute employment subject to this chapter from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January 1 of any calendar year subsequent to such 2 calendar years only if at least 30 days prior to such January 1 such employing unit has filed with the department a written notice to that effect.

History: En. Sec. 8, Ch. 137, L. 1937; amd. Sec. 4, Ch. 137, L. 1939; amd. Sec. 5, Ch. 164, L. 1941; amd. Sec. 1, Ch. 37, L. 1969; amd. Sec. 1, Ch. 103, L. 1971; amd. Sec. 1, Ch. 181, L. 1973; amd. Sec. 2, Ch. 323, L. 1975; R.C.M. 1947, 87-110(c); amd. Sec. 1, Ch. 349, L. 1981.

Cross-References

"Department" defined, 39-51-201.

"Employing unit" defined, 39-51-201.

39-51-1103. Contributions by employers required — payments in lieu thereof authorized for certain employers. (1) Contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this chapter with respect to wages, as defined in 39-51-201, paid for employment, as defined in this chapter, occurring during such calendar year.

(2) Such contributions shall become due and be paid by each employer to the department for the fund in accordance with such regulations as the department may prescribe and shall not be deducted in whole or in part from the wages of individuals in his employ.

(3) In the payment of any contributions, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

(4) Nonprofit organizations defined in section 501(c)(3) of the federal Internal Revenue Code and which are exempt from tax under section 501(a) of such code may elect to make payments in lieu of contributions.

(5) The state and its political subdivisions, effective January 1, 1977, may elect to make payments in lieu of contributions or pay under a special contributions plan established for governmental entities only.

History: En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; R.C.M. 1947, 87-109(part); amd. Sec. 18, Ch. 685, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 9, Ch. 125, L. 1985.

Cross-References

"Contributions" defined, 39-51-201.

"Department" defined, 39-51-201.

"Fund" defined, 39-51-201.

"Wages" defined, 39-51-201.

39-51-1104. Duty and liability of contractor and subcontractor respectively in regard to contributions owed by subcontractor. (1) Any contractor who is or becomes an employer under the provisions of this chapter who contracts with any subcontractor who also is or becomes an employer under the provisions of this chapter shall withhold sufficient money on the contract to guarantee that all contributions, penalties, and interest are paid upon completion of the contract.

(2) It shall be the duty of any subcontractor who is or becomes an employer under the provisions of this chapter to furnish the contractor with a certification issued by the department, prior to final payment for the particular job, stating that said subcontractor is current and in full compliance with the provisions of this chapter.

(3) Failure to comply with the provisions of this section shall render the contractor directly liable for all contributions, penalties, and interest due from the subcontractor on the particular job, and the administrator has all of the remedies of collection against the contractor under the provisions of this chapter as though the services in question were performed directly for the contractor.

History: **En. Subd. (b), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; amd. Sec. 1, Ch. 36, L. 1969; amd. Sec. 1, Ch. 105, L. 1975; amd. Sec. 25, Ch. 368, L. 1975; amd. Sec. 1, Ch. 386, L. 1977; R.C.M. 1947, 87-136(3); amd. Sec. 1, Ch. 349, L. 1981.**

Cross-References
"Contributions" defined, 39-51-201.
"Department" defined, 39-51-201.

39-51-1105. Liability of corporate officers for contributions owed by corporation. When a corporation subject to Montana corporate law has failed to file the annual corporation report with the Montana secretary of state as required by law the department shall hold the president, vice-president, secretary, and treasurer jointly and severally liable for any contributions due for the period in which the corporation is delinquent in filing the annual corporation report. If the required annual corporation report is made and filed after the time specified, such officers may not, on account of prior failure to make report, be held liable for the contributions thereafter accruing.

History: **En. Subd. (b), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; amd. Sec. 1, Ch. 36, L. 1969; amd. Sec. 1, Ch. 105, L. 1975; amd. Sec. 25, Ch. 368, L. 1975; amd. Sec. 1, Ch. 386, L. 1977; R.C.M. 1947, 87-136(4); amd. Sec. 1, Ch. 349, L. 1981.**

Cross-References
"Contributions" defined, 39-51-201.
"Department" defined, 39-51-201.

39-51-1106. Repealed. Sec. 21, Ch. 685, L. 1979.

History: **En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; R.C.M. 1947, 87-109(part); amd. Sec. 2, Ch. 57, L. 1979.**

39-51-1107. Repealed. Sec. 21, Ch. 685, L. 1979.

History: **En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; R.C.M. 1947, 87-109(b)(3).**

39-51-1108. Amount of wages per employee subject to contribution. (1) Payment of contributions shall apply only to wages paid up to and including the amount specified in this section by an employer to an employee with respect to employment.

(2) The taxable wage base for each year is the greater of 80% of the average annual wage as determined under 39-51-2201 (rounded to the nearest $100) during the calendar year immediately preceding the most recently completed calendar year, or the amount of taxable wage base specified in the Federal Unemployment Tax Act.

History: En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; R.C.M. 1947, 87-109(d); amd. Sec. 8, Ch. 685, L. 1979; amd. Sec. 2, Ch. 371, L. 1985.

Cross-References

"Calendar quarter" defined, 39-51-201.

"Contributions" defined, 39-51-201.

"Wages" defined, 39-51-201.

39-51-1109. Tax appeals. A decision, determination, or redetermination of the department involving contribution liability, contribution rate, application for refund, employment status, or the charging of benefit payments to employers making payment in lieu of contributions is final unless an interested party entitled to notice thereof applies for an appeal to an appeals referee. The appeal must be made in the same manner as provided in 39-51-2402 for the appeal of a decision relating to a claim for unemployment insurance benefits. Statutory rules of evidence and civil procedure do not apply to hearings in the appeal. The decision of the appeals referee and any appeal therefrom must be made in the same manner as prescribed in 39-51-2403 through 39-51-2410.

History: En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; R.C.M. 1947, 87-109(e); amd. Sec. 44, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 10, Ch. 125, L. 1985; amd. Sec. 6, Ch. 234, L. 1987; amd. Sec. 4, Ch. 314, L. 1987; amd. Sec. 1, Ch. 302, L. 1989.

Compiler's Comments

1989 Amendment: At beginning of first sentence substituted "A" for "Any person aggrieved by any", near middle, after "contributions", deleted "may appeal to an appeals referee. Such decision, determination, or redetermination", at end substituted "an appeal to an appeals referee" for "a review within 10 days after notification was mailed to the last-known address, provided that the period may be extended for good cause", inserted second and third sentences that read: "The appeal must be made in the same manner as provided in 39-51-2402 for the appeal of a decision relating to a claim for unemployment insurance benefits. Statutory rules of evidence and civil procedure do not apply to hearings in the appeal", and at end substituted "through 39-51-2410" for "and 39-51-2404".

Applicability: Section 3, Ch. 302, L. 1989, provided: "[This act] applies to any decision, determination, or redetermination of the department of labor and industry on or after October 1, 1989, involving contribution liability, contribution rate, application for refund, employment status, or the charging of benefit payments to employers making payment in lieu of contributions."

Cross-References

"Department" defined, 39-51-201.

39-51-1110. Refunds to employers. (1) If not later than 3 years after the date on which any contributions or interest thereon became due or not later than 1 year from the date on which payment was made, whichever is later, an employer who has paid such contributions or interest thereon shall make application for an adjustment thereof in connection with subsequent contribution payments or for a refund thereof because such adjustment cannot be made and the department shall determine that such contributions or interest or any portion thereof was erroneously collected, the department shall allow such employer to make an adjustment thereof, without interest, in connection with subsequent contribution payments by him or, if such adjustment cannot be made, the department shall refund said amount, without interest, from the fund. For like cause and within the same period, adjustment or refund may be so made on the department's own initiative.

(2) If the department shall determine that an employer has paid contributions to this state under this chapter when such contributions should have been paid to another state under a similar act of such other state, transfer of such contributions to such other state shall be made upon discovery or, upon proof of payment that such other state has been fully paid, then refund to such employer shall be made at any time upon application without limitation of time.

(3) In the event that this chapter is not certified by the secretary of labor under section 1603 of the Internal Revenue Code, as amended, 1939, for any year, then and in that event refunds shall be made of all contributions required under this chapter from employers for that year.

History: En. Subd. (d), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; amd. Sec. 3, Ch. 233, L. 1943; amd. Sec. 6, Ch. 164, L. 1955; amd. Sec. 10, Ch. 171, L. 1957; amd. Sec. 26, Ch. 368, L. 1975; R.C.M. 1947, 87-138; amd. Sec. 1, Ch. 349, L. 1981.

Cross-References

"Contributions" defined, 39-51-201.
"Department" defined, 39-51-201.
"Fund" defined, 39-51-201.
"State" defined, 39-51-201.

39-51-1111 through 39-51-1120 reserved.

39-51-1121. Definitions. As used in this part and part 12, the following definitions apply:

(1) "Computation date" means the reporting period ending September 30 preceding the calendar year for which a covered employer's contribution rate is effective.

(2) "Cutoff date" means December 31 immediately following the computation date. The department may extend the cutoff date in meritorious cases.

(3) "Deficit employer" means an employer who is subject under this chapter and who has established a record of accumulated benefits charged to the employer's account in excess of the employer's accumulated contributions paid as of the cutoff date.

(4) "Department" means the department of labor and industry.

(5) "Eligible employer" means an employer who has been subject under this chapter for the 3 fiscal years immediately preceding the computation date and who has:

(a) filed all contribution reports prescribed by the department;

(b) paid all contributions and all assessments under 39-51-404(4) and penalties and interest thereon;

(c) established a record of accumulated contributions in excess of benefits charged to the employer's account; and

(d) paid wages in at least 1 of the 8 calendar quarters preceding the computation date.

(6) "Fiscal year" means the four consecutive calendar quarters ending on September 30.

(7) "Governmental entities" means the state or any political subdivision of the state or an instrumentality of the state or a political subdivision, including any employing unit funded directly by tax levies.

(8) "Taxable wage base" means the amount of wages subject to contributions and to assessments under 39-51-404(4) for each calendar year. Payment of contributions and of assessments under 39-51-404(4) may apply only to wages paid up to and including the amount specified in 39-51-1108.

(9) "Unrated employer" means an employer who is subject under this chapter and who does not meet all the criteria of an eligible or a deficit employer.

History: En. Secs. 1, 2, Ch. 685, L. 1979; amd. Sec. 1, Ch. 3, L. 1981; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 7, Ch. 234, L. 1987; amd. Sec. 7, Ch. 618, L. 1989.

Compiler's Comments

1989 Amendment: In definition of eligible employer, before "years", inserted "fiscal"; inserted definition of taxable wage base; and made minor change in phraseology. Amendment effective July 1, 1989.

Cross-References

"Benefits" defined, 39-51-201.
"Contributions" defined, 39-51-201.
"Employing unit" defined, 39-51-201.
"State" defined, 39-51-201.

39-51-1122. Treatment of minor irregularities in determination of eligible employer status. For the purpose of determining if a covered employer is an eligible employer, delinquencies of a minor nature may be disregarded if it is shown to the satisfaction of the department that the covered employer acted in good faith and that forfeiture of a reduced contribution rate because of such minor delinquency would be inequitable.

History: En. Sec. 3, Ch. 685, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Cross-References

"Department" defined, 39-51-201, 39-51-1121.

39-51-1123. Rates of contributions. All covered employers, except governmental entities and those qualified and electing to make payments in lieu of contributions, shall pay contributions at rates assigned annually by the department.

History: En. Sec. 4, Ch. 685, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Cross-References

"Contributions" defined, 39-51-201.
"Department" defined, 39-51-201, 39-51-1121.

39-51-1124. Procedure for election to make payments in lieu of contributions. (1) Any nonprofit organization defined in 39-51-1103 or governmental entity electing to become liable for payments in lieu of contributions must file a written notice of its election with the department not later than 30 days immediately following the date of the determination of subjectivity to this chapter. This election shall be for a period of not less than 2 years.

(2) Any nonprofit organization defined in 39-51-1103 or governmental entity which has been paying contributions for at least 2 taxable years may change to payments in lieu of contributions by filing a written notice to that effect with the department within 30 days before the beginning of the taxable year for which the change is effective.

History: En. Sec. 5, Ch. 685, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Cross-References
"Contributions" defined, 39-51-201.
"Department" defined, 39-51-201, 39-51-1121.

39-51-1125. Computation of payments in lieu of contributions. (1) After June 30, 1987, qualified employers electing to make payments in lieu of contributions shall pay into the fund an amount equivalent to the full amount of regular benefits plus the state's share of extended benefits paid to individuals based on wages paid by the employing unit. After December 31, 1978, governmental entities shall pay the full amount of extended benefits.

(2) If benefits paid an individual are based on wages paid by both the employer and one or more other employers, the amount payable by any one employer to the fund bears the same ratio to total benefits paid to the individual as the base period wages paid to the individual by such employer bear to the total amount of base period wages paid to the individual by all the individual's base period employers.

(3) If the base period wages of an individual include wages from more than one such employer, the amount to be paid into the fund with respect to the benefits paid to the individual shall be prorated among the liable employers in proportion to the wages paid to the individual by each such employer during the base period.

(4) The amount of payment required from employers shall be ascertained by the department monthly and becomes due and payable by the employer quarterly as directed in this chapter. Penalty and interest for delinquency shall be assessed such employers as specified in 39-51-1301.

History: En. Sec. 6, Ch. 685, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 8, Ch. 234, L. 1987.

Cross-References
"Base period" defined, 39-51-201.
"Benefits" defined, 39-51-201.
"Contributions" defined, 39-51-201.
"Department" defined, 39-51-201, 39-51-1121.
"Employing unit" defined, 39-51-201.
"Fund" defined, 39-51-201.
"Wages" defined, 39-51-201.

39-51-1126. Termination of election to make payments in lieu of contributions. (1) Any nonprofit organization or governmental entity may terminate its election to make payments in lieu of contributions after 2 years from the effective date of such election by filing a written notice with the department not later than 30 days prior to the beginning of the taxable year for which the termination is effective.

(2) If a nonprofit organization or governmental entity is delinquent in making payments in lieu of contributions, the department may terminate the election to make payments in lieu of contributions as of the beginning of the next taxable year, and the termination is effective for that and the next taxable year.

History: En. Sec. 7, Ch. 685, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Cross-References
"Contributions" defined, 39-51-201.
"Department" defined, 39-51-201, 39-51-1121.

39-51-1127 through 39-51-1130 reserved.

39-51-1131. Terminated. Sec. 12, Ch. 371, L. 1985.

History: En. Sec. 1, Ch. 371, L. 1985.

Part 12

Employer Classification and Experience Rating

39-51-1201 through 39-51-1205. Repealed. Sec. 21, Ch. 685, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

39-51-1201 through 39-51-1205. En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; R.C.M. 1947, 87-109.

39-51-1206. Department to provide for notification of employers of their classification and contribution rate. The department shall by regulation provide for the proper notification of employers of the classification and rate of contribution applicable to their accounts. Such notification shall be final for all purposes unless and until such employer files a written request with the department for a redetermination or hearing thereon within 30 days after receipt of such notice.

History: En. Sec. 7, Ch. 137, L. 1937; amd. Sec. 3, Ch. 137, L. 1939; amd. Sec. 4, Ch. 164, L. 1941; amd. Sec. 2, Ch. 245, L. 1947; amd. Sec. 5, Ch. 191, L. 1953; amd. Sec. 2, Ch. 164, L. 1955; amd. Sec. 3, Ch. 171, L. 1957; amd. Sec. 5, Ch. 156, L. 1961; amd. Sec. 3, Ch. 269, L. 1963; amd. Sec. 4, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 117, L. 1971; amd. Sec. 1, Ch. 163, L. 1973; amd. Sec. 1, Ch. 430, L. 1975; amd. Sec. 1, Ch. 165, L. 1977; R.C.M. 1947, 87-109(part); amd. Sec. 1, Ch. 349, L. 1981.

Cross-References

"Department" defined, 39-51-201, 39-51-1121.

39-51-1207 through 39-51-1210 reserved.

39-51-1211. Definitions. The definitions set forth in 39-51-1121 apply to this part.

History: En. 39-51-1211 by Code Commissioner, 1979.

39-51-1212. Experience rating for governmental entities. (1) Governmental entities newly covered under this chapter after December 31, 1974, shall make payments for the period prior to July 1, 1977, equal to 0.4% of total wages paid employees for services in employment during the calendar quarter and for the period after July 1, 1977, shall make payments at the median rate.

(2) The rates of governmental entities who have accumulated experience rating credits shall be adjusted annually as follows with each governmental entity assigned a rate based upon:

(a) its benefit cost experience, to be arrived at by dividing the total sum of benefits charged to the employer's account for all past periods which are completed transactions by December 31 by total wages from date of subjectivity of the employing unit through December 31; and

(b) the benefit cost for all past years of governmental entities electing to pay contributions compared with total payrolls reported for all past years by these governmental entities used as a median, with the rates so fixed using the median that the rates will, when applied to the total annual payroll for subject governmental entities, yield total paid contributions equaling approximately the total benefit costs.

(3) New governmental entities electing to pay contributions shall be assigned the median rate for the year in which they become subject.

(4) At no time may the minimum rate be less than 0.1% or the maximum rate be greater than 1.5%. The rates are to be graduated at one-tenth intervals.

(5) In the event benefit charges exceed contributions paid in the last 2 completed fiscal years, governmental entities' rates will be adjusted by increasing all rates to the next higher schedule.

(6) The computed rate is effective July 1 of each year.

(7) Governmental entities must be charged for their share of the total benefits paid to a claimant if the governmental entity contributed wages during the claimant's base period. The benefit charged must be based on the percentage of wages paid by the governmental entity as compared to the total wages paid by all employers in the claimant's base period.

History: **En. Sec. 9, Ch. 685, L. 1979; amd. Sec. 1, Ch. 50, L. 1989.**

Compiler's Comments

1989 Amendment: Inserted (7) requiring governmental entity to be charged share of benefits paid to claimant if the entity contributed wages during claimant's base period.

Cross-References

"Annual payroll" defined, 39-51-201.
"Benefits" defined, 39-51-201.
"Calendar quarter" defined, 39-51-201.
"Contributions" defined, 39-51-201.
"Employing unit" defined, 39-51-201.
"Wages" defined, 39-51-201.

39-51-1213. Classification of employers for experience rating purposes. (1) The department shall for each calendar year classify employers in accordance with their actual experience in the payment of contributions and with respect to benefits charged against their accounts, with contribution rates reflecting benefit experience. Each employer's rate for a calendar year shall be determined on the basis of the employer's record as of October 1 of the preceding calendar year.

(2) In making the classification, each eligible and deficit employer's contribution rate is determined in the manner set forth below:

(a) Each employer is given an "experience factor" which is contributions paid since October 1, 1981, minus benefits charged on each employer's account since October 1, 1981, divided by the employer's average annual taxable payroll rounded to the next lower dollar amount for the 3 fiscal years immediately preceding the computation date. The computation of the "experience factor" shall be to six decimal places.

(b) Schedules shall be prepared listing all eligible and deficit employers in inverse numerical order of their experience factors. There shall be listed on such schedules for each employer in addition to the experience factor:

(i) the amount of the employer's taxable payroll for the fiscal year ending on the computation date; and

(ii) the cumulative total consisting of the sum of the employer's taxable payroll for the fiscal year ending on the computation date and the corresponding taxable payrolls for all other employers preceding that employer on the schedules.

(3) The cumulative taxable payroll amounts listed on the schedules provided for in 39-51-1218 shall be segregated into groups that will yield approximately the average tax rate according to the tax schedule assigned for that

particular taxable year. Each group shall be identified by the rate class number listed in the table which represents the percentage limits of each group. Each employer on the schedules is assigned that contribution rate opposite that employer's rate class for the tax schedule in effect for the taxable year.

(4) (a) If the grouping of rate classes requires the inclusion of exactly one-half of an employer's taxable payroll, the employer is assigned the lower of the two rates designated for the two classes in which the halves of that employer's taxable payroll are so required.

(b) If the group of rate classes requires the inclusion of a portion other than exactly one-half of an employer's taxable payroll, the employer is assigned the rate designated for the class in which the greater part of that employer's taxable payroll is so required.

(c) If one or more employers on the schedules have experience factors identical to that of the last employer included in a particular rate class, all such employers are included in and assigned the contribution rate specified for such class, notwithstanding the provisions of 39-51-1214.

(5) If the taxable payroll amount or the experience factor or both such taxable payroll amount and experience factor of any eligible or deficit employer listed on the schedules is changed, the employer is placed in that position on the schedules which the employer would have occupied had that employer's taxable payroll amount or experience factor as changed been used in determining that employer's position in the first instance, but such change does not affect the position or rate classification of any other employer listed on the schedules and does not affect the rate determination for previous years.

(6) Deficit employers who have not filed all required payroll reports or paid all contributions due by the cutoff date must be assigned the maximum contribution rate in effect for the taxable year.

History: En. Sec. 10, Ch. 685, L. 1979; amd. Sec. 2, Ch. 3, L. 1981; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 168, Ch. 575, L. 1981; amd. Sec. 3, Ch. 371, L. 1985; amd. Sec. 9, Ch. 234, L. 1987.

Cross-References

"Annual payroll" defined, 39-51-201.
"Annual total payroll" defined, 39-51-201.
"Benefits" defined, 39-51-201.
"Contributions" defined, 39-51-201.
"Department" defined, 39-51-201, 39-51-1121.

39-51-1214. Benefit payments chargeable to employer experience rating accounts. (1) Except for cost reimbursement, benefits paid shall be charged to the account of each of the claimant's base period employers. The benefit charged must be based on the percentage of wages paid by the employer as compared to the total wages paid by all employers in the claimant's base period.

(2) No charge shall be made to the account of such covered employer with respect to benefits paid under the following situations:

(a) if paid to a worker who terminated his services voluntarily without good cause attributable to such covered employer or who had been discharged for misconduct in connection with such services;

(b) if paid in accordance with the extended benefit program triggered by either national or state indicators; or

(c) if the base period employer continues to provide employment with no reduction in hours or wages.

History: En. Sec. 11, Ch. 685, L. 1979; amd. Sec. 3, Ch. 3, L. 1981; amd. Sec. 2, Ch. 50, L. 1989.

Compiler's Comments

1989 Amendment: At beginning of (1) inserted exception clause and near end substituted requirement that benefits be charged pro rata to each base period employee for former requirement that benefits be charged to the covered employer, except governmental employers "who paid the largest individual amount of base period wages as shown on the determination used as the basis for the payment of such benefits"; and inserted (2)(c) providing for no charge to a base period employer who continues to provide employment with no reduction in hours or wages.

Cross-References

"Base period" defined, 39-51-201.
"Benefits" defined, 39-51-201.
"State" defined, 39-51-201.
"Wages" defined, 39-51-201.

39-51-1215. Maintenance of experience rating records. An experience rating record shall be maintained for each covered employer. The record is credited with all contributions which the covered employer has paid since October 1, 1981. The record is also charged with the amount of benefits paid which are chargeable to the covered employer's account since October 1, 1981. Nothing in this section grants any covered employer or individual in his service a priority with respect to any claim or right because of amounts paid by the covered employer into the employment security fund.

History: En. Sec. 12, Ch. 685, L. 1979; amd. Sec. 4, Ch. 3, L. 1981; amd. Sec. 4, Ch. 371, L. 1985.

Cross-References

"Benefits" defined, 39-51-201.
"Contributions" defined, 39-51-201.
"Fund" defined, 39-51-201.

39-51-1216. Experience rating record voided when account inactive. Whenever an employer whose coverage has been terminated because he has ceased to do business or because he has not covered employment for a period of 3 years becomes a covered employer, he is considered a new employer and he is not to be credited with his previous experience for the purpose of computing any future "experience factor".

History: En. Sec. 13, Ch. 685, L. 1979.

39-51-1217. Schedule of rates assigned based on trust fund reserve. (1) The rate schedule for each calendar year is assigned based upon the ratio of the trust fund balance as of December 31 prior to the rate year to total wages in covered employment for the 12-month period prior to the computation date.

(2) The ratio at the top of each tax schedule in the tax table shown in 39-51-1218 represents the minimum fund level required for a specific tax schedule to be in effect.

(3) Employer rates are assigned in accord with the rates provided in each schedule for eligible, unrated, and deficit employers, based upon their experience as defined in this section.

(4) For the calendar year 1990 and each year thereafter, any employer classified as unrated must be assigned a rate equal to the average rate of contributions paid by employers in the same major industrial classification for the calendar year preceding the computation date, plus an adjustment for the difference between the average tax rate assigned for the previous calendar

year and the average rate in effect for the current calendar year. At no time may an unrated employer be assigned a rate lower than 1%. The computation of the average rate of contributions in a major industrial classification must exclude those employer accounts that are not eligible for the computation of an experience rating solely by reason of insufficient experience. The department shall develop the major industrial classifications for the state and shall annually determine the contribution rate for each classification.

History: En. Sec. 14, Ch. 685, L. 1979; amd. Sec. 5, Ch. 3, L. 1981; amd. Sec. 3, Ch. 50, L. 1989.

Compiler's Comments

1989 Amendment: Inserted (4) providing for assignment of a rate for 1990 and beyond to any previously unrated employer.

Cross-References

"Fund" defined, 39-51-201.

"Wages" defined, 39-51-201.

39-51-1218. Rate schedules.

SCHEDULES OF CONTRIBUTION RATES — Part I

	Sched. I	Sched. II	Sched. III	Sched. IV
Minimum Ratio of Fund to Total Wages	(.0260)	(.0245)	(.0225)	(.0200)
Average Tax Rate	1.4	1.6	1.8	2.0
Rate Class	Contribution Rates For Eligible Employers			
1	0.0%	0.1%	0.3%	0.5%
2	0.1	0.3	0.5	0.7
3	0.3	0.5	0.7	0.9
4	0.5	0.7	0.9	1.1
5	0.7	0.9	1.1	1.3
6	0.9	1.1	1.3	1.5
7	1.1	1.3	1.5	1.7
8	1.3	1.5	1.7	1.9
9	1.5	1.7	1.9	2.1
10	1.7	1.9	2.1	2.3
	Contribution Rates For Unrated Employers			
	2.0%	2.2%	2.4%	2.6%
Rate Class	Contribution Rates For Deficit Employers			
1	3.2%	3.4%	3.6%	3.8%
2	3.4	3.6	3.8	4.0
3	3.6	3.8	4.0	4.2
4	3.8	4.0	4.2	4.4
5	4.0	4.2	4.4	4.6
6	4.2	4.4	4.6	4.8
7	4.4	4.6	4.8	5.0
8	4.6	4.8	5.0	5.2
9	4.8	5.0	5.2	5.4
10	6.4	6.4	6.4	6.4

SCHEDULES OF CONTRIBUTION RATES — Part II

Sched. V	Sched. VI	Sched. VII	Sched. VIII	Sched. IX	Sched. X
(.0170)	(.0135)	(.0095)	(.0075)	(.0050)	(.....)
2.2	2.4	2.6	2.8	3.0	3.2
Contribution Rates For Eligible Employers					
0.7%	0.9%	1.1%	1.3%	1.5%	1.7%
0.9	1.1	1.3	1.5	1.7	1.9
1.1	1.3	1.5	1.7	1.9	2.1
1.3	1.5	1.7	1.9	2.1	2.3
1.5	1.7	1.9	2.1	2.3	2.5
1.7	1.9	2.1	2.3	2.5	2.7
1.9	2.1	2.3	2.5	2.7	2.9

2.1	2.3	2.5	2.7	2.9	3.1
2.3	2.5	2.7	2.9	3.1	3.3
2.5	2.7	2.9	3.1	3.3	3.5

Contribution Rates For Unrated Employers

2.8%	3.0%	3.2%	3.4%	3.6%	3.8%

Contribution Rates For Deficit Employers

4.0%	4.2%	4.4%	4.6%	4.8%	5.0%
4.2	4.4	4.6	4.8	5.0	5.2
4.4	4.6	4.8	5.0	5.2	5.4
4.6	4.8	5.0	5.2	5.4	5.6
4.8	5.0	5.2	5.4	5.6	5.8
5.0	5.2	5.4	5.6	5.8	6.0
5.2	5.4	5.6	5.8	6.0	6.2
5.4	5.6	5.8	6.0	6.2	6.4
5.6	5.8	6.0	6.2	6.4	6.4
6.4	6.4	6.4	6.4	6.4	6.4

History: En. Sec. 15, Ch. 685, L. 1979; amd. Sec. 5, Ch. 371, L. 1985.

Cross-References

"Fund" defined, 39-51-201.

"Wages" defined, 39-51-201.

39-51-1219. Procedures for the substitution, merger, or acquisition of an employer account by a successor employing unit. (1) Subject to the provisions of subsection (3), whenever any individual or organization (whether or not a covered employer) in any manner succeeds to or acquires all or substantially all of the business of an employer who at the time of acquisition was a covered employer and whenever in respect to whom the department finds that the business of the predecessor is continued solely by the successor:

(a) the separate account and the actual contribution, benefit, and taxable payroll experience of the predecessor shall, upon the joint application of the predecessor and the successor within 90 days after such acquisition and approval by the department, be transferred to the successor employer for the purpose of determining the successor's liability and rate of contribution; and

(b) any successor who was not an employer on the date of acquisition becomes a covered employer as of such date.

(2) Whenever any individual or organization (whether or not a covered employer) in any manner succeeds to or acquires part of the business of an employer who at the time of acquisition was a covered employer and whenever such portion of the business is continued by the successor:

(a) so much of the separate account and the actual contribution, benefit, and taxable payroll experience of the predecessor as is attributable to the portion of the business transferred, as determined on a pro rata basis in the same ratio that the wages of covered employees properly allocable to the transferred portion of the business bear to the payroll of the predecessor in the last four completed calendar quarters immediately preceding the date of transfer, shall, upon the joint application of the predecessor and the successor within 90 days after such acquisition and approval by the department, be transferred to the successor employer for the purpose of determining the successor's liability and rate of contribution; and

(b) any successor who was not an employer on the date of acquisition becomes a covered employer as of such date.

(3) (a) The 90-day period may be extended at the discretion of the department.

(b) Whenever a predecessor covered employer has a deficit experience rating account as of the last computation date, the transfer provided for in subsections (1) and (2) is mandatory except when it is shown by substantial evidence that the management, the ownership, or both the management and ownership are not substantially the same for the successor as for the predecessor, in which case the successor shall begin with the rate of a new employer. Whenever such mandatory transfer involves only a portion of the experience rating record and the predecessor or successor employers fail to supply the required payroll information within 10 days after notice, the transfer shall be based on estimates of the applicable payrolls.

(4) (a) If the successor was a covered employer prior to the date of the acquisition of all or a part of the predecessor's business, the successor's rate of contribution, effective the first day of the calendar year immediately following the date of acquisition, is based on the combined experience of the predecessor and successor.

(b) If the successor was not a covered employer prior to the date of the acquisition of all or a part of the predecessor's business, the successor's rate is the rate applicable to the predecessor with respect to the period immediately preceding the date of acquisition, but if there was more than one predecessor, the successor's rate shall be a newly computed rate based on the combined experience of the predecessors, becoming effective immediately after the date of acquisition and remaining in effect for the balance of the rate year.

History: En. Sec. 16, Ch. 685, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 10, Ch. 234, L. 1987; amd. Sec. 55, Ch. 83, L. 1989.

Compiler's Comments

1989 Amendment: Near middle of (2)(a) substituted "bear" for "bears"; and in (3)(b) substituted "that the management, the ownership, or both the management and ownership are not substantially the same" for "that neither the management, the ownership, nor both the management and ownership are substantially the same".

Cross-References

"Benefit" defined, 39-51-201.
"Department" defined, 39-51-201, 39-51-1121.
"Employing unit" defined, 39-51-201.
"Wages" defined, 39-51-201.

Part 13

Unpaid Contributions

39-51-1301. *(Temporary)* **Penalty and interest on past-due contributions.** (1) Contributions unpaid on the date on which they are due and payable, as provided by subsections (1) and (2) of 39-51-1103 and 39-51-1125, that are paid by the end of the month following the due date shall be subject to a penalty assessment of $10 or 10% of the contribution due, whichever is greater. If the contributions are not paid by the end of the month following the due date, the employer shall be subject to a penalty assessment of $15 or

15% of the contributions due, whichever is greater. All past-due contributions shall bear interest at the rate of 18% a year, to be prorated on a daily basis.

(2) A penalty of $40 shall be assessed whenever, as the result of a willful refusal of an employer to furnish wage information or pay contributions on time, the department issues a subpoena to obtain wage information or makes a summary or jeopardy assessment pursuant to 39-51-1302.

(3) There is an account in the federal special revenue fund. Penalties and interest collected under this section must be deposited in that account. Money deposited in that account and appropriated to the department must be used by the department to administer this chapter and for programs to train and retrain unemployed and underemployed persons. Money in the account not appropriated for these purposes must be transferred by the department to the unemployment insurance trust fund at the end of each fiscal year.

(4) When failure to pay contributions on time was not caused by willful intent of the employer, the department may abate the penalty and interest.

(5) All money accruing to the unemployment insurance trust fund from interest and penalties collected on past-due contributions must be used solely for the payment of unemployment insurance benefits and may not be used for any other purpose. *(Terminates July 1, 1991—sec. 1, Ch. 600, L. 1989.)*

39-51-1301. *(Effective July 1, 1991)* **Penalty and interest on past-due contributions.** (1) Contributions unpaid on the date on which they are due and payable, as provided by subsections (1) and (2) of 39-51-1103 and 39-51-1125, that are paid by the end of the month following the due date shall be subject to a penalty assessment of $10 or 10% of the contribution due, whichever is greater. If the contributions are not paid by the end of the month following the due date, the employer shall be subject to a penalty assessment of $15 or 15% of the contributions due, whichever is greater. All past-due contributions shall bear interest at the rate of 18% a year, to be prorated on a daily basis.

(2) A penalty of $40 shall be assessed whenever, as the result of a willful refusal of an employer to furnish wage information or pay contributions on time, the department issues a subpoena to obtain wage information or makes a summary or jeopardy assessment pursuant to 39-51-1302.

(3) Interest and penalties collected pursuant to this section shall be paid into the unemployment insurance trust fund.

(4) When failure to pay contributions on time was not caused by willful intent of the employer, the department may abate the penalty and interest.

(5) All money accruing to the unemployment insurance trust fund from interest and penalties collected on past-due contributions must be used solely for the payment of unemployment insurance benefits and may not be used for any other purpose.

History: En. Subd. (a), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; amd. Sec. 3, Ch. 233, L. 1943; amd. Sec. 5, Ch. 190, L. 1945; amd. Sec. 24, Ch. 368, L. 1975; amd. Sec. 1, Ch. 197, L. 1977; R.C.M. 1947, 87-135; amd. Sec. 1, Ch. 47, L. 1979; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 19, Ch. 685, L. 1979; amd. Sec. 1, Ch. 2, L. 1981; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 2, Ch. 369, L. 1983; amd. Sec. 1, Ch. 555, L. 1983; amd. Sec. 1, Ch. 13, Sp. L. June 1986; amd. Sec. 11, Ch. 234, L. 1987.

Compiler's Comments

Extension of Termination Date: Section 1, Ch. 600, L. 1989, amended sec. 3, Ch. 13, Sp. L. June 1986, by changing the termination date of the temporary version from July 1, 1989, to July 1, 1991, thereby extending collection of penalties and interest on overdue employer contributions. Amendment effective April 21, 1989.

Effective Date: The 1986 amendment was effective July 3, 1986, and terminates July 1, 1989.

Cross-References

"Contributions" defined, 39-51-201.

"Department" defined, 39-51-201.

"Fund" defined, 39-51-201.

39-51-1302. Summary or jeopardy assessment of unpaid contributions. (1) If any employer fails to file a report or return as required under this chapter or the regulations of the department adopted thereunder within the time specified, the department may make a summary or jeopardy assessment of the amount due by making up such report and determining the amount of contributions due and owing to the fund upon the basis of such information as the department may be able to obtain, and thereupon the same shall be collected the same as other reports and contributions due, with penalty and interest as provided in this chapter.

(2) Upon making such summary or jeopardy assessment, the department shall immediately notify the employer in writing by personal service or by certified or registered mail in the usual course at the last known principal place of business operated by the employer. Such assessment shall be final unless the employer shall protest such assessment in writing within 15 days after service of the notice or, within the same period of time, the employer shall file a correct, signed, and sworn report and statement as provided by the chapter and the regulations of the department.

(3) Upon written protest being filed as above set forth, a day certain for the hearing thereof shall be fixed by the department and notice thereof mailed to the employer. At such hearing, the facts ascertained by the department shall be conclusive and the department may upon the basis of such facts ascertained assess the amount due, modify, set aside, or revise the prior assessment and require the employer to pay the amount due with penalty and interest as provided for in this chapter. A copy of the decision of the department and the assessment of the amount due shall be mailed to the employer at his last known principal place of business and thereupon become final.

History: En. as Subd. (f) of Sec. 14, Ch. 137, L. 1937 by Sec. 3, Ch. 233, L. 1943; amd. Sec. 28, Ch. 368, L. 1975; R.C.M. 1947, 87-140; amd. Sec. 1, Ch. 349, L. 1981.

Cross-References

"Contributions" defined, 39-51-201.

"Department" defined, 39-51-201.

"Fund" defined, 39-51-201.

39-51-1303. Collection of unpaid contributions by civil action. (1) If, after due notice, any employer defaults in any payment of contributions or interest thereon, the department may at its discretion initiate a civil action in the name of the Montana department of labor and industry to collect the amount due, and the employer adjudged in default shall pay the costs of such action.

(2) An action for the collection of contributions due must be brought within 5 years after the due date of such contributions or it is barred.

(3) The department may pursue its remedy under either this section or 39-51-1304, or both.

History: En. Subd. (b), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; amd. Sec. 1, Ch. 36, L. 1969; amd. Sec. 1, Ch. 105, L. 1975; amd. Sec. 25, Ch. 368, L. 1975; amd. Sec. 1, Ch. 386, L. 1977; R.C.M. 1947, 87-136(1); amd. Sec. 46, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 111, L. 1983; amd. Sec. 1, Ch. 514, L. 1985; amd. Sec. 12, Ch. 234, L. 1987.

Cross-References

"Contributions" defined, 39-51-201.

"Department" defined, 39-51-201.

39-51-1304. Lien for payment of unpaid contributions and assessments — levy and execution. (1) Unpaid contributions and assessments under 39-51-404(4), including penalties and interest assessed thereon, have the effect of a judgment against the employer, arising at the time such payments are due. The department may issue a certificate setting forth the amount of payments due and directing the clerk of the district court of any county of the state to enter the certificate as a judgment in the docket pursuant to 25-9-301. From the time the judgment is docketed, it becomes a lien upon all real property of the employer. From the time the judgment is filed with the secretary of state or a registrar of personal property specifically describing the personal property, it becomes a lien upon personal property of the employer. After the due process requirements of 39-51-1109 and 39-51-2403 have been satisfied, the department may enforce the judgment pursuant to Title 25, chapter 13, except that the department may enforce the judgment at any time within 10 years of the creation of the lien.

(2) The lien provided for in subsection (1) is not valid against any third party owning an interest in real or personal property against which the judgment is enforced if:

(a) the third party's interest is recorded prior to the entrance of the certificate as a judgment; and

(b) the third party receives from the most recent grantor of the interest a signed affidavit stating that all contributions, assessments, penalties, and interest due from the grantor have been paid.

(3) A grantor who signs and delivers an affidavit is subject to the penalties imposed by 39-51-3204 if any part of it is untrue. Notwithstanding the provisions of 39-51-3204, the department may proceed against the employer under this section or 39-51-1303, or both, to collect the delinquent contributions, assessments, penalties, and interest.

History: En. as Subd. (e) of Sec. 14, Ch. 137, L. 1937 by Sec. 8, Ch. 164, L. 1941; amd. Sec. 8, Ch. 156, L. 1961; amd. Sec. 27, Ch. 368, L. 1975; R.C.M. 1947, 87-139; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 2, Ch. 514, L. 1985; amd. Sec. 13, Ch. 234, L. 1987; amd. Sec. 1, Ch. 487, L. 1987.

Cross-References

"Contributions" defined, 39-51-201.

"Department" defined, 39-51-201.

Liens generally, Title 71, ch. 3, part 1.

39-51-1305. Priority of payment of contributions due under legal dissolutions or distributions. In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this state, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, contributions then or thereafter due shall be paid in full prior to all other claims, except taxes and claims for wages of not more than $250 to each claimant earned within 6 months of the commencement of the proceeding.

History: En. Subd. (c), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; R.C.M. 1947, 87-137; amd. Sec. 11, Ch. 125, L. 1985.

Cross-References

"Contributions" defined, 39-51-201.

"Wages" defined, 39-51-201.

39-51-1306. Reciprocity with other states for collection of unpaid contributions. (1) The courts of this state shall recognize and enforce liabilities for unemployment contributions imposed by other states which extend a like comity to this state.

(2) The department is hereby empowered to sue in the courts of any other jurisdiction which extends such comity to collect unemployment contributions and interest due this state. The officials of other states which by statute or otherwise extend a like comity to this state may sue in the courts of this state to collect for such contributions and interest and penalties, if any, due such state. In any such case the administrator may through his attorney or attorneys institute and conduct such suit for such other state.

(3) Venue of such proceedings shall be the same as for actions to collect delinquent contributions, penalties, and interest due under this chapter.

(4) A certificate by the secretary of any such state under the great seal of such state attesting the authority of such official or officials to collect unemployment insurance contributions, penalties, and interest shall be conclusive evidence of such authority.

History: En. Subd. (b), Sec. 14, Ch. 137, L. 1937; amd. Sec. 5, Ch. 137, L. 1939; amd. Sec. 8, Ch. 164, L. 1941; amd. Sec. 1, Ch. 36, L. 1969; amd. Sec. 1, Ch. 105, L. 1975; amd. Sec. 25, Ch. 368, L. 1975; amd. Sec. 1, Ch. 386, L. 1977; R.C.M. 1947, 87-136(2); amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981.

Cross-References

"Contributions" defined, 39-51-201.

"Department" defined, 39-51-201.

"State" defined, 39-51-201.

Parts 14 through 20 reserved

Part 21

Benefit Eligibility

39-51-2101. Total unemployment — when. An individual shall be deemed totally unemployed in any week during which the individual performed no work and earned no wages or a week of less than full-time work with wages of less than two times the individual's weekly benefit amount.

History: En. Subd. (n) to (r), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 6, Ch. 190, L. 1945; amd. Sec. 3, Ch. 238, L. 1955; amd. Sec. 12, Ch. 171, L. 1957; amd. Sec. 11, Ch. 156, L. 1961; amd. Sec. 4, Ch. 269, L. 1963; amd. Sec. 1, Ch. 200, L. 1969; amd. Sec. 33, Ch. 368, L. 1975; amd. Sec. 1, Ch. 115, L. 1977; R.C.M. 1947, 87-149(a)(1); amd. Sec. 14, Ch. 234, L. 1987.

Cross-References

"Week" defined, 39-51-201.

39-51-2102. Week of unemployment — when deemed to commence. An individual's week of unemployment shall be deemed to commence only after his registration at an unemployment office, except as the department may by regulation otherwise prescribe.

History: En. Subd. (n) to (r), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 6, Ch. 190, L. 1945; amd. Sec. 3, Ch. 238, L. 1955; amd. Sec. 12, Ch. 171, L. 1957; amd. Sec. 11, Ch. 156, L. 1961; amd. Sec. 4, Ch. 269, L. 1963; amd. Sec. 1, Ch. 200, L. 1969; amd. Sec. 33, Ch. 368, L. 1975; amd. Sec. 1, Ch. 115, L. 1977; R.C.M. 1947, 87-149(a)(2); amd. Sec. 1, Ch. 349, L. 1981.

Cross-References

"Department" defined, 39-51-201.

"Week" defined, 39-51-201.

39-51-2103. Payment of benefits. (1) Benefits are payable from the fund to any individual who is or becomes unemployed and eligible for benefits as is herein prescribed.

(2) All benefits shall be paid through public employment offices in the state or other agencies designated by the department in accordance with such rules as the department may prescribe.

History: En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 169, L. 1971; amd. Sec. 1, Ch. 394, L. 1973; amd. Sec. 1, Ch. 400, L. 1975; amd. Sec. 1, Ch. 528, L. 1977; R.C.M. 1947, 87-103(part); amd. Sec. 1, Ch. 349, L. 1981.

Cross-References

"Benefits" defined, 39-51-201.

"Department" defined, 39-51-201.

"Fund" defined, 39-51-201.

39-51-2104. General benefit eligibility conditions. An unemployed individual is eligible to receive benefits for any week of total unemployment within his benefit year only if the department finds that:

(1) he has filed a claim at and thereafter has continued to report at an employment office in accordance with such regulation as the department may prescribe, except that the department may, by regulation, prescribe that in cases in which it finds such requirements oppressive or inconsistent with the purposes of this chapter, an unemployed individual may file a claim and report for work by mail or through other governmental agencies;

(2) he is able to work and is available for work and is seeking work; provided, however, that no claimant is considered ineligible in any week of unemployment for failure to comply with the provisions of this subsection if such failure is due to an illness or disability which occurs after he has registered for work and no suitable work has been offered to such claimant after the beginning of such illness or disability;

(3) prior to the first week for which he is paid benefits he has been totally unemployed for a waiting period of 1 week. No week is counted as a week of total unemployment for the purposes of this subsection:

(a) if benefits have been paid with respect thereto;

(b) unless the individual was eligible for benefits with respect thereto;

(c) unless it occurs within the benefit year of the claimant;

(d) unless it occurs after benefits first could become payable to any individual under this chapter.

History: En. Sec. 4, Ch. 137, L. 1937; amd. Sec. 2, Ch. 137, L. 1939; amd. Sec. 2, Ch. 164, L. 1941; amd. Sec. 1, Ch. 233, L. 1943; amd. Sec. 1, Ch. 190, L. 1945; amd. Sec. 3, Ch. 191, L. 1953; amd. Sec. 2, Ch. 238, L. 1955; amd. Sec. 2, Ch. 140, L. 1957; amd. Sec. 3, Ch. 156, L. 1961; amd. Sec. 1, Ch. 390, L. 1971; amd. Sec. 1, Ch. 323, L. 1975; amd. Sec. 2, Ch. 368, L. 1975; amd. Sec. 1, Ch. 428, L. 1977; R.C.M. 1947, 87-105(a) thru (d); amd. Sec. 47, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 12, Ch. 125, L. 1985; amd. Sec. 6, Ch. 371, L. 1985.

Cross-References

"Benefits" defined, 39-51-201.

"Department" defined, 39-51-201.

"Employment office" defined, 39-51-201.

"Week" defined, 39-51-201.

39-51-2105. Qualifying wages. (1) To qualify for benefits, an individual must have had at least 20 weeks of work with an average of $50 per week in subject employment in the base period.

(2) On and after July 5, 1987, to qualify for benefits, an individual's total base period wages must be equal to or greater than 7% of the average annual wage as described in 39-51-2201(2). To qualify for benefits, an individual's total base period wages must be $1,000 or more.

History: En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 169, L. 1971; amd. Sec. 1, Ch. 394, L. 1973; amd. Sec. 1, Ch. 400, L. 1975; amd. Sec. 1, Ch. 528, L. 1977; R.C.M. 1947, 87-103(part); amd. Sec. 1, Ch. 688, L. 1979; amd. Sec. 1, Ch. 153, L. 1987; amd. Sec. 15, Ch. 234, L. 1987.

Cross-References

"Base period" defined, 39-51-201.

"Benefits" defined, 39-51-201.

"Institution of higher education" defined, 39-51-201.

"State" defined, 39-51-201.

"Wages" defined, 39-51-201.

"Week" defined, 39-51-201.

39-51-2106. Certain wages not to be used in determining benefit eligibility or amount. Wages earned for services performed as an employee representative as defined in the Railroad Unemployment Insurance Act (52 Stat. 1094) or for services performed for an employer as defined in said act shall not be included for the purposes of determining eligibility or weekly benefit amount under this chapter.

History: En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 169, L. 1971; amd. Sec. 1, Ch. 394, L. 1973; amd. Sec. 1, Ch. 400, L. 1975; amd. Sec. 1, Ch. 528, L. 1977; R.C.M. 1947, 87-103(part).

Cross-References

"Wages" defined, 39-51-201.

39-51-2107. Services for remuneration to be performed during benefit year as condition for receiving benefits in second benefit year — amount required. An individual who received benefits during a benefit year must perform services for remuneration after the beginning of that year as a condition for receiving benefits in a second benefit year. The service may be in either covered or noncovered employment. However, the individual must have earned the lesser of three-thirteenths of his high quarter of his second benefit year or 6 times his weekly benefit amount of that same year.

History: En. Sec. 4, Ch. 137, L. 1937; amd. Sec. 2, Ch. 137, L. 1939; amd. Sec. 2, Ch. 164, L. 1941; amd. Sec. 1, Ch. 233, L. 1943; amd. Sec. 1, Ch. 190, L. 1945; amd. Sec. 3, Ch. 191, L. 1953; amd. Sec. 2, Ch. 238, L. 1955; amd. Sec. 2, Ch. 140, L. 1957; amd. Sec. 3, Ch. 156, L. 1961; amd. Sec. 1, Ch. 390, L. 1971; amd. Sec. 1, Ch. 323, L. 1975; amd. Sec. 2, Ch. 368, L. 1975; amd. Sec. 1, Ch. 428, L. 1977; R.C.M. 1947, 87-105(e).

Cross-References

"Benefits" defined, 39-51-201.

39-51-2108. Payment of benefits based on service in public, charitable, or educational organizations. (1) Benefits based on service in employment defined in subsections (5) and (6) of 39-51-203 and subsections

(2) and (3) of 39-51-204 are payable in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to this chapter, except that benefits based on service in an instructional, research, or principal administrative capacity for an educational institution may not be paid to an individual for any week of unemployment which begins during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract if the individual has a contract or reasonable assurance of a contract to perform services in any such capacity for any such educational institution for both such academic years or both such terms.

(2) Benefits based on services in any other capacity for an educational institution shall be denied to any individual for any week which commences during a period between 2 successive academic years or terms if the individual performs such services in the first of such academic years or terms and there is a reasonable assurance that the individual will perform such services in the second of such academic years or terms. If any individual is denied benefits and was not offered an opportunity to perform such service for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of the benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of the denial provided for in this section.

(3) Benefits based on services described in subsections (1) and (2) of this section shall be denied to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess and there is reasonable assurance that such individual will perform such service in the period immediately following such vacation period or holiday recess.

(4) Benefits based on services described in subsections (1) and (2) of this section to an individual who performed such services for an educational institution while in the employ of an educational service agency shall be denied as specified in subsections (1), (2), and (3) of this section. The term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such service to one or more educational institutions.

History: En. Sec. 4, Ch. 137, L. 1937; amd. Sec. 2, Ch. 137, L. 1939; amd. Sec. 2, Ch. 164, L. 1941; amd. Sec. 1, Ch. 233, L. 1943; amd. Sec. 1, Ch. 190, L. 1945; amd. Sec. 3, Ch. 191, L. 1953; amd. Sec. 2, Ch. 238, L. 1955; amd. Sec. 2, Ch. 140, L. 1957; amd. Sec. 3, Ch. 156, L. 1961; amd. Sec. 1, Ch. 390, L. 1971; amd. Sec. 1, Ch. 323, L. 1975; amd. Sec. 2, Ch. 368, L. 1975; amd. Sec. 1, Ch. 428, L. 1977; R.C.M. 1947, 87-105(f); amd. Sec. 48, Ch. 397, L. 1979; amd. Sec. 1, Ch. 1, L. 1985.

Cross-References

"Benefits" defined, 39-51-201.

"Week" defined, 39-51-201.

39-51-2109. Payment of benefits to athletes. Effective January 1, 1978, benefits shall not be paid to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between 2 successive sport seasons or similar periods if such individual performed such services in the first of such seasons or similar periods and there is a reasonable assurance that such individual will perform such services in the later of such seasons or similar periods.

History: En. Sec. 4, Ch. 137, L. 1937; amd. Sec. 2, Ch. 137, L. 1939; amd. Sec. 2, Ch. 164, L. 1941; amd. Sec. 1, Ch. 233, L. 1943; amd. Sec. 1, Ch. 190, L. 1945; amd. Sec. 3, Ch. 191, L. 1953; amd. Sec. 2, Ch. 238, L. 1955; amd. Sec. 2, Ch. 140, L. 1957; amd. Sec. 3, Ch. 156, L. 1961; amd. Sec. 1, Ch. 390, L. 1971; amd. Sec. 1, Ch. 323, L. 1975; amd. Sec. 2, Ch. 368, L. 1975; amd. Sec. 1, Ch. 428, L. 1977; R.C.M. 1947, 87-105(g).

Cross-References

"Benefits" defined, 39-51-201.

"Week" defined, 39-51-201.

39-51-2110. Payment of benefits to aliens. (1) Effective January 1, 1978, benefits shall not be paid on the basis of services performed by an alien unless such alien is an individual who has been lawfully admitted for permanent residence or otherwise is permanently residing in the United States under color of law, including an alien who is lawfully present in the United States as a result of the application of the provisions of section 203(a)(7) or section 212(d)(5) of the Immigration and Nationality Act.

(2) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(3) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of his alien status shall be made except upon a preponderance of the evidence.

History: En. Sec. 4, Ch. 137, L. 1937; amd. Sec. 2, Ch. 137, L. 1939; amd. Sec. 2, Ch. 164, L. 1941; amd. Sec. 1, Ch. 233, L. 1943; amd. Sec. 1, Ch. 190, L. 1945; amd. Sec. 3, Ch. 191, L. 1953; amd. Sec. 2, Ch. 238, L. 1955; amd. Sec. 2, Ch. 140, L. 1957; amd. Sec. 3, Ch. 156, L. 1961; amd. Sec. 1, Ch. 390, L. 1971; amd. Sec. 1, Ch. 323, L. 1975; amd. Sec. 2, Ch. 368, L. 1975; amd. Sec. 1, Ch. 428, L. 1977; R.C.M. 1947, 87-105(h).

Cross-References

"Benefits" defined, 39-51-201.

Part 22

Amount and Duration of Benefits

39-51-2201. Weekly benefit amount — determination of average weekly wage. (1) For claims filed before July 7, 1985, an eligible individual's weekly benefit amount shall be the total base period wages divided by the number of weeks of covered employment times 50%. The weekly benefit amount, if not a multiple of $1, must be rounded to the nearest lower full dollar amount. However, such amount shall not be less than the minimum or more than the maximum weekly benefit amount. For claims effective July 7, 1985, and after, an individual's weekly benefit amount shall be the total base period wages divided by the number of weeks of covered employment times 49%. The weekly benefit amount, if not a multiple of $1, must be rounded to the nearest lower full dollar amount. However, such amount shall not be less than the minimum or more than the maximum weekly benefit amount.

(2) On or before May 31 of each year, the total wages paid by all employers as reported on contribution reports submitted on or before such date for the preceding calendar year shall be divided by the average monthly number

of individuals employed during the same preceding calendar year as reported on such contribution reports. The amount thus obtained shall be divided by 52 and the average weekly wage, rounded to the nearest cent, thus determined. Sixty percent of the average weekly wage shall constitute the maximum weekly benefit amount and shall apply to all maximum weekly benefit amount claims for benefits filed to establish a benefit year commencing on or after July 1 of the same year, except that the maximum weekly benefit amount for benefit years commencing on or after July 1, 1984, through January 3, 1987, is the amount calculated under this subsection after January 1, 1984, and on or before May 31, 1984. Such maximum weekly benefit amount, if not a multiple of $1, shall be computed to the nearest lower full dollar amount.

(3) The minimum weekly benefit amount shall be 15% of the average weekly wage. The minimum weekly benefit amount, if not a multiple of $1, shall be computed to the nearest lower full dollar amount.

History: En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 169, L. 1971; amd. Sec. 1, Ch. 394, L. 1973; amd. Sec. 1, Ch. 400, L. 1975; amd. Sec. 1, Ch. 528, L. 1977; R.C.M. 1947, 87-103(b); amd. Sec. 2, Ch. 688, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 193, L. 1983; amd. Sec. 7, Ch. 371, L. 1985.

Cross-References
"Base period" defined, 39-51-201.
"Benefit year" defined, 39-51-201.
"Benefits" defined, 39-51-201.
"Calendar quarter" defined, 39-51-201.
"Department" defined, 39-51-201.
"Wages" defined, 39-51-201.

39-51-2202. Partial payment of benefits. Partial payment for a week of unemployment as used in this section shall be the claimant's weekly benefit amount less 50% of wages earned in excess of one-fourth of his weekly benefit amount. Such wages and the one-fourth weekly benefit amount, if not a multiple of $1, shall be rounded to the nearest lower full dollar amount.

History: En. Subd. (n) to (r), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 6, Ch. 190, L. 1945; amd. Sec. 3, Ch. 238, L. 1955; amd. Sec. 12, Ch. 171, L. 1957; amd. Sec. 11, Ch. 156, L. 1961; amd. Sec. 4, Ch. 269, L. 1963; amd. Sec. 1, Ch. 200, L. 1969; amd. Sec. 33, Ch. 368, L. 1975; amd. Sec. 1, Ch. 115, L. 1977; R.C.M. 1947, 87-149(a)(3)(A); amd. Sec. 2, Ch. 193, L. 1983.

Cross-References
"Wages" defined, 39-51-201.
"Week" defined, 39-51-201.
"Weekly benefit amount" defined, 39-51-201.

39-51-2203. Reduction of benefits because of amounts received from certain other sources. (1) Claimant's weekly benefit amount shall be reduced by the amount that he is receiving from a governmental or other pension, retirement pay, annuity, or other similar periodic payment which is based on work for and entirely contributed to by a base-period employer.

(2) However, if the service performed for the base-period employer does not affect either the eligibility for or the amount of the pension or other type of retirement benefit received from the plan maintained or contributed to by the base-period employer, the reduction requirement of subsection (1) does not apply.

(3) The exception in subsection (2) is not applicable to the receipt of social security and/or railroad retirement benefits.

(4) For the purposes of subsection (1), the department shall, by rule, adopt minimum federal offset requirements as imposed by the federal Employee Retirement Income Security Act of 1974, P.L. 94-566, as amended in 1980 by P.L. 96-364, and as may be amended after March 11, 1981.

History: **En. Subd. (n) to (r), Sec. 19, Ch. 137, L. 1937; amd. Sec. 6, Ch. 137, L. 1939; amd. Sec. 10, Ch. 164, L. 1941; amd. Sec. 5, Ch. 233, L. 1943; amd. Sec. 6, Ch. 190, L. 1945; amd. Sec. 3, Ch. 238, L. 1955; amd. Sec. 12, Ch. 171, L. 1957; amd. Sec. 11, Ch. 156, L. 1961; amd. Sec. 4, Ch. 269, L. 1963; amd. Sec. 1, Ch. 200, L. 1969; amd. Sec. 33, Ch. 368, L. 1975; amd. Sec. 1, Ch. 115, L. 1977; R.C.M. 1947, 87-149(a)(3)(B); amd. Sec. 1, Ch. 41, L. 1981; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 145, L. 1983; amd. Sec. 8, Ch. 618, L. 1989.**

Compiler's Comments

1989 Amendment: In (1), at end of first sentence, substituted "entirely contributed to by a base-period employer" for "contributed to in whole or in part by a base-period employer" and deleted second sentence providing reduction amount determined by ratio of employer's contributions to fund from which payment made so claimant receives credit only for proportion of his contributions to fund. Amendment effective July 1, 1989.

Cross-References

"Benefit" defined, 39-51-201.
"Department" defined, 39-51-201.
"Weekly benefit amount" defined, 39-51-201.

39-51-2204. Maximum benefit amount. Any otherwise eligible individual is entitled during the individual's benefit year to a total amount of benefits equal to the individual's weekly benefit amount, as calculated according to 39-51-2201(1), times the number of full weeks of benefit entitlement appearing in the following table in the line which includes the individual's ratio of total base period earnings to the highest quarter of earnings in the base period:

Ratio of Total Base Period Earnings to High Quarter At Least	But Less Than	Full Weeks of Benefits
1.00	1.25	8
1.25	1.50	10
1.50	1.75	12
1.75	2.00	14
2.00	2.25	16
2.25	2.50	18
2.50	2.75	20
2.75	3.00	22
3.00	3.25	24
3.25	—	26

History: **En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 169, L. 1971; amd. Sec. 1, Ch. 394, L. 1973; amd. Sec. 1, Ch. 400, L. 1975; amd. Sec. 1, Ch. 528, L. 1977; R.C.M. 1947, 87-103(d); amd. Sec. 3, Ch. 688, L. 1979; amd. Sec. 2, Ch. 153, L. 1987.**

Cross-References

"Base period" defined, 39-51-201.
"Benefit year" defined, 39-51-201.
"Benefits" defined, 39-51-201.

39-51-2205. Continuation of benefits at death of claimant. All accrued benefits due and payable at the time of death to any deceased claimant shall be paid to the surviving spouse or, if there be no surviving spouse, then to the surviving children or, if there be no surviving children, then to the next of kin without the necessity of any recipient obtaining letters testamentary or of administration.

History: En. Sec. 3 (a), (b), (c), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 1, Ch. 191, L. 1953; amd. Sec. 1, Ch. 238, L. 1955; amd. Sec. 1, Ch. 140, L. 1957; amd. Sec. 1, Ch. 156, L. 1961; amd. Sec. 1, Ch. 269, L. 1963; amd. Sec. 1, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 169, L. 1971; amd. Sec. 1, Ch. 394, L. 1973; amd. Sec. 1, Ch. 400, L. 1975; amd. Sec. 1, Ch. 528, L. 1977; R.C.M. 1947, 87-103(g).

Cross-References

"Benefits" defined, 39-51-201.

39-51-2206. Repealed. Sec. 28, Ch. 234, L. 1987.

History: En. Sec. 15, Ch. 125, L. 1985.

Part 23

Benefit Disqualification

39-51-2301. Disqualification not to be confined to a single benefit year. A disqualification pursuant to the provisions of this part may not be confined to a single benefit year.

History: En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(h).

Cross-References

"Benefit year" defined, 39-51-201.

39-51-2302. Disqualification for leaving work without good cause. (1) An individual shall be disqualified for benefits if he has left work without good cause attributable to his employment.

(2) He may not be disqualified if the department finds that he left his employment because of personal illness or injury not associated with misconduct or left his employment upon the advice of a licensed and practicing physician and, after recovering from his illness or injury when recovery is certified by a licensed and practicing physician, he returned to his employer and offered his service and his regular or comparable suitable work was not available, if so found by the department, provided he is otherwise eligible.

(3) To requalify for benefits, an individual must perform services other than self-employment for which remuneration is received equal to or in excess of six times his weekly benefit amount subsequent to the week in which the act causing the disqualification occurred unless he has been in regular attendance at an educational institution accredited by the state of Montana for at least 3 consecutive months from the date of his enrollment.

History: En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (a); amd. Sec. 4, Ch. 688, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 8, Ch. 371, L. 1985.

Cross-References

"Benefits" defined, 39-51-201.

"Department" defined, 39-51-201.

"Weekly benefit amount" defined, 39-51-201.

39-51-2303. Disqualification for discharge due to misconduct. An individual shall be disqualified for benefits after being discharged:

(1) for misconduct connected with the individual's work or affecting the individual's employment until the individual has performed services, other than self-employment, for which remuneration is received equal to or in excess of eight times the individual's weekly benefit amount subsequent to the week in which the act causing the disqualification occurred;

(2) for gross misconduct connected with the individual's work or committed on the employer's premises, as determined by the department, for a period of 52 weeks.

History: En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (b); amd. Sec. 5, Ch. 688, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 16, Ch. 234, L. 1987.

Cross-References

"Benefits" defined, 39-51-201.

"Department" defined, 39-51-201.

"Gross misconduct" defined, 39-51-201.

"Weekly benefit amount" defined, 39-51-201.

39-51-2304. Disqualification for failure to apply for or to accept suitable work. (1) An individual is disqualified for benefits if the individual fails without good cause either to apply for available and suitable work when so directed by the employment office or the department or to accept an offer of suitable work which the individual is physically able and mentally qualified to perform or to return to customary self-employment, if any, when so directed by the department. Such disqualification continues for the week in which such failure occurs and until the individual has performed services, other than self-employment, for which remuneration is received equal to or in excess of six times that individual's weekly benefit amount subsequent to the date the act causing the disqualification occurred, with a reduction in the individual's maximum benefit amount equal to six times the weekly benefit amount, as determined by the department, provided the individual has not left this work under disqualifying circumstances.

(2) In determining whether or not any work is suitable for an individual, the department shall consider:

(a) the degree of risk involved to the individual's health, safety, and morals;

(b) the individual's physical fitness and prior training;

(c) the individual's experience and previous earnings;

(d) the individual's length of unemployment and prospects for securing local work in the customary occupation; and

(e) the distance of the available work from the individual's residence.

(3) Notwithstanding any other provisions of this chapter, including subsection (4), no work may be considered suitable and benefits may not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(a) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(b) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(c) if, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(4) Subject to subsection (3), after 13 weeks of unemployment, suitable work is work that meets the criteria in this section and that offers 75% of the individual's earnings in previous insured work in the individual's customary occupation. No individual, however, is required to accept a job paying less than the federal minimum wage.

History: **En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (c); amd. Sec. 49, Ch. 397, L. 1979; amd. Sec. 6, Ch. 688, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 409, L. 1985; amd. Sec. 3, Ch. 153, L. 1987; amd. Sec. 17, Ch. 234, L. 1987.**

Cross-References
"Benefits" defined, 39-51-201.
"Department" defined, 39-51-201.
"Employment office" defined, 39-51-201.
"Wages" defined, 39-51-201.
"Weekly benefit amount" defined, 39-51-201.

39-51-2305. Disqualification when unemployment due to strike. (1) An individual shall be disqualified for benefits for any week with respect to which the department finds that his total unemployment is due to a strike which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the department that:

(a) he is not participating in or financing or directly interested in the labor dispute which caused the strike; and

(b) he does not belong to a grade or class of workers of which, immediately before the commencement of the strike, there were members employed at the premises at which the strike occurs, any of whom are participating in or financing or directly interested in the dispute.

(2) If in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purpose of this section, be deemed to be a separate factory, establishment, or other premises.

(3) If the department, upon investigation, shall find that such labor dispute is caused by the failure or refusal of any employer to conform to the provisions of any law of the state wherein the labor dispute occurs or of the United States pertaining to collective bargaining, hours, wages, or other conditions of work, such labor dispute shall not render the workers ineligible for benefits.

History: **En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L.**

1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (d); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 400, L. 1985.

Cross-References

"Benefits" defined, 39-51-201.
"Department" defined, 39-51-201.
"State" defined, 39-51-201.
"Wages" defined, 39-51-201.

39-51-2306. Disqualification because of receipt of certain other wages, compensation, or benefits. (1) Effective April 1, 1977, an individual shall be disqualified for benefits for any week with respect to which he is receiving or has received payment in the form of:

(a) compensation for disability under the workers' compensation law or the occupational disease law of this or any other state or under a similar law of the United States or under the social security disability law. However, when an injured claimant has ceased to draw compensation benefits and shall have returned to the labor market, he shall then be entitled to receive unemployment compensation benefits under this chapter if he shall be otherwise qualified. Compensation which is received as a payment for a permanent partial disability shall not be computed to be spread over a period of weeks in advance so as to bar the recipient from receiving unemployment compensation benefits under this chapter, provided the recipient has returned to the labor market and is otherwise qualified.

(b) benefits under the Railroad Unemployment Insurance Act or any state unemployment compensation act or similar laws of any state or of the United States. This disqualification does not apply to any week with respect to which an individual is receiving or has received benefits under an unemployment compensation law of another state or of the United States if such benefits are paid pursuant to 39-51-504.

(2) Receipt of any wages, compensation, or benefits as set forth in subsection (1) of this section after payment of unemployment benefits and with respect to the same week for which unemployment benefits were received will thereupon require such individual to repay such unemployment benefits, and the department may collect such unemployment benefits in the same manner as provided for collection of benefits under 39-51-3206.

History: En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (e); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 9, Ch. 618, L. 1989.

Compiler's Comments

1989 Amendment: Deleted (1)(a) that provided disqualification for payment in form of wages in lieu of notice or separation or termination allowance. Amendment effective July 1, 1989.

Cross-References

"Benefits" defined, 39-51-201.
"Department" defined, 39-51-201.
"State" defined, 39-51-201.
"Wages" defined, 39-51-201.
"Week" defined, 39-51-201.

39-51-2307. Disqualification because of student status. (1) Effective April 1, 1977, an individual shall be disqualified for benefits during the school year (within the autumn, winter, and spring seasons of the year) or the vacation periods within such school year or during any prescribed school term if claimant is a student regularly attending an established educational institution.

(2) Notwithstanding any other provisions in this section, no otherwise eligible individual shall be denied benefits for any week because he is in training approved by the department, nor shall such individual be denied benefits with respect to any week in which he is in training approved by the department by reason of the application of provisions in 39-51-2304 or the application of provisions in 39-51-2104(2).

History: **En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (f); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 13, Ch. 125, L. 1985.**

Cross-References

"Benefits" defined, 39-51-201.

"Department" defined, 39-51-201.

"Week" defined, 39-51-201.

39-51-2308. Disqualification because principal occupation is self-employment. Effective April 1, 1977, an individual shall be disqualified for benefits if his principal occupation is self-employment.

History: **En. Sec. 5, Ch. 137, L. 1937; amd. Sec. 3, Ch. 164, L. 1941; amd. Sec. 4, Ch. 191, L. 1953; amd. Sec. 1, Ch. 164, L. 1955; amd. Sec. 1, Ch. 171, L. 1957; amd. Sec. 4, Ch. 156, L. 1961; amd. Sec. 2, Ch. 269, L. 1963; amd. Sec. 1, Ch. 84, L. 1965; amd. Sec. 1, Ch. 188, L. 1967; amd. Sec. 3, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 38, L. 1971; amd. Sec. 1, Ch. 415, L. 1971; amd. Sec. 1, Ch. 369, L. 1973; amd. Sec. 1, Ch. 498, L. 1973; amd. Sec. 1, Ch. 170, L. 1975; amd. Sec. 1, Ch. 133, L. 1977; R.C.M. 1947, 87-106(intro), (g).**

Cross-References

"Benefits" defined, 39-51-201.

Part 24

Claims for Benefits

39-51-2401. Claims to be made in accordance with regulations — employers to post and make available copies of such regulations. Claims for benefits shall be made in accordance with such regulations as the department may prescribe. Each employer shall post and maintain printed statements of such regulations in places readily accessible to individuals in his service and shall make available to each such individual at the time he becomes unemployed a printed statement of such regulations. Such printed statements shall be supplied by the department to each employer without cost to him.

History: **En. Sec. 6 (a) to (e), Ch. 137, L. 1937; amd. Sec. 2, Ch. 171, L. 1957; amd. Sec. 1, Ch. 262, L. 1973; amd. Sec. 3, Ch. 368, L. 1975; amd. Sec. 1, Ch. 20, L. 1977; R.C.M. 1947, 87-107(a); amd. Sec. 1, Ch. 349, L. 1981.**

Cross-References

Administrative rulemaking procedure, Title 2, ch. 4, parts 1 through 3.

"Benefits" defined, 39-51-201.

"Department" defined, 39-51-201.

39-51-2402. Initial determination — redetermination. (1) A representative designated by the department and hereinafter referred to as a deputy shall promptly examine the claim and, on the basis of the facts found by the deputy, shall either determine whether or not such claim is valid and, if valid, the week with respect to which benefits shall commence, the weekly benefit amount payable, and the maximum benefit amount or shall refer such claim or any question involved therein to an appeals referee who shall make the decision with respect thereto in accordance with the procedure prescribed in 39-51-2403. The deputy shall promptly notify the claimant and any other interested party of the decision and the reasons therefor.

(2) The deputy may for good cause reconsider the decision and shall promptly notify the claimant and such other interested parties of the amended decision and the reasons therefor.

(3) No determination or redetermination of an initial or additional claim may be made under this section unless 5 days' notice of the time and place of the claimant's interview for examination of the claim is mailed to each interested party.

(4) A determination or redetermination shall be deemed final unless an interested party entitled to notice thereof applies for reconsideration of the determination or appeals therefrom within 10 days after such notification was mailed to the interested party's last-known address, provided that such period may be extended for good cause.

(5) Except as provided in subsection (6), no redetermination of a claim for benefits may be made after 2 years from the date of the initial determination.

(6) A redetermination may be made within 3 years from the date of the initial determination of a claim if the initial determination was based on a false claim, misrepresentation, or failure to disclose a material fact by the claimant or the employer."

History: **En. Sec. 6 (a) to (e), Ch. 137, L. 1937; amd. Sec. 2, Ch. 171, L. 1957; amd. Sec. 1, Ch. 262, L. 1973; amd. Sec. 3, Ch. 368, L. 1975; amd. Sec. 1, Ch. 20, L. 1977; R.C.M. 1947, 87-107(b), (c); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 4, Ch. 153, L. 1987; amd. Sec. 18, Ch. 234, L. 1987; amd. Sec. 10, Ch. 618, L. 1989.**

Compiler's Comments

1989 Amendment: Inserted (5) providing that no redetermination may be made after 2 years from initial determination, except as provided in subsection (6); inserted (6) allowing redetermination within 3 years if initial determination was based on false claim, misrepresentation, or failure to disclose material fact; and made minor change in phraseology. Amendment effective July 1, 1989.

Cross-References

"Benefits" defined, 39-51-201.
"Department" defined, 39-51-201.
"Week" defined, 39-51-201.
"Weekly benefit amount" defined, 39-51-201.

39-51-2403. Decision of appeals referee. After a hearing, an appeals referee shall make findings and conclusions promptly and on the basis thereof affirm, modify, or reverse the deputy's determination or redetermination. Each interested party shall be furnished promptly a copy of the decision and the supporting findings and conclusions. This decision shall be final unless further review is initiated pursuant to 39-51-2404 within 10 days after such notification was mailed to the interested party's last-known address, provided that such period may be extended for good cause.

History: **En. Sec. 6 (a) to (e), Ch. 137, L. 1937; amd. Sec. 2, Ch. 171, L. 1957; amd. Sec. 1, Ch. 262, L. 1973; amd. Sec. 3, Ch. 368, L. 1975; amd. Sec. 1, Ch. 20, L. 1977; R.C.M. 1947, 87-107(e); amd. Sec. 19, Ch. 234, L. 1987.**

39-51-2404. Appeal to board. Any interested party dissatisfied with a decision of an appeals referee is entitled to appeal to the board. The department will promptly transmit all records pertinent to the appeal to the board.

When a decision is rendered by the board with copies of such decision to all interested parties, including the department, that decision shall become final unless an interested party requests a rehearing or initiates judicial review by filing a petition in district court within 30 days of the date of mailing of the board's decision to his last known address.

History: En. Sec. 6 (a) to (e), Ch. 137, L. 1937; amd. Sec. 2, Ch. 171, L. 1957; amd. Sec. 1, Ch. 262, L. 1973; amd. Sec. 3, Ch. 368, L. 1975; amd. Sec. 1, Ch. 20, L. 1977; R.C.M. 1947, 87-107(g); amd. Sec. 1, Ch. 349, L. 1981.

Cross-References

"Board" defined, 39-51-201.

"Department" defined, 39-51-201.

39-51-2405. Prompt payment of claims. (1) Notwithstanding any provision in 39-51-2402 or 39-51-2404, benefits shall be paid promptly in accordance with a determination or redetermination under 39-51-2402 or the decision of an appeals referee, the board, or a reviewing court under 39-51-2404 upon the issuance of such determination, redetermination, or decision regardless of the pendency of the period to apply for reconsideration, file an appeal, or petition for judicial review that is provided with respect thereto in 39-51-2404, as the case may be, or the pendency of any such application, filing, or petition, unless and until such determination, redetermination, or decision has been modified or reversed by a subsequent redetermination or decision, in which event benefits shall be paid or denied for weeks of unemployment thereafter in accordance with such modifying or reversing redetermination or decision.

(2) If a deputy's determination or redetermination allowing benefits is affirmed in any amount by an appeals referee or by the board or if a decision of an appeals referee allowing benefits is affirmed in any amount by the board, such benefits shall be paid promptly regardless of any further appeal or the disposition of such appeal and no injunction, supersedeas, stay, or other writ or process suspending the payment of such benefits shall be issued by the board or any court. Benefits shall not be paid for any weeks of unemployment involved in such modification or reversal that begins after such final decision.

History: En. Sec. 6 (a) to (e), Ch. 137, L. 1937; amd. Sec. 2, Ch. 171, L. 1957; amd. Sec. 1, Ch. 262, L. 1973; amd. Sec. 3, Ch. 368, L. 1975; amd. Sec. 1, Ch. 20, L. 1977; R.C.M. 1947, 87-107(f).

Cross-References

"Benefits" defined, 39-51-201.

"Board" defined, 39-51-201.

39-51-2406. Continuing jurisdiction of department over claims. The department shall have continuing jurisdiction over all claims filed for benefits to revise, modify, alter, cancel, and amend all orders, findings, and determinations made therein at any time and shall not lose such jurisdiction unless and until the jurisdiction of such claim and subject matter thereof has been taken by a court of competent jurisdiction in a proceedings filed therein as provided for in subsections (2) through (6) of 39-51-2410.

History: En. Sec. 6 (f) to (i), Ch. 137, L. 1937; Subd. (a) amd. Sec. 2, Ch. 233, L. 1943; amd. Sec. 4, Ch. 368, L. 1975; amd. Sec. 1, Ch. 24, L. 1977; amd. Sec. 1, Ch. 201, L. 1977; R.C.M. 1947, 87-108(part); amd. Sec. 1, Ch. 349, L. 1981.

Cross-References

"Benefits" defined, 39-51-201.

"Department" defined, 39-51-201.

39-51-2407. Procedure for disputed claims to be prescribed by regulation. The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance with regulations prescribed by the department or the board for determining the rights of the parties, whether or not such regulations conform to common law or statutory rules of evidence and other technical rules or procedure.

History: En. Sec. 6 (f) to (i), Ch. 137, L. 1937; Subd. (a) amd. Sec. 2, Ch. 233, L. 1943; amd. Sec. 4, Ch. 368, L. 1975; amd. Sec. 1, Ch. 24, L. 1977; amd. Sec. 1, Ch. 201, L. 1977; R.C.M. 1947, 87-108(part); amd. Sec. 1, Ch. 349, L. 1981.

Cross-References

Administrative rulemaking procedure, Title 2, ch. 4, parts 1 through 3.

"Board" defined, 39-51-201.

"Department" defined, 39-51-201.

39-51-2408. Disputed claim — records of all proceedings to be kept. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded but need not be transcribed unless the disputed claim is further appealed.

History: En. Sec. 6 (f) to (i), Ch. 137, L. 1937; Subd. (a) amd. Sec. 2, Ch. 233, L. 1943; amd. Sec. 4, Ch. 368, L. 1975; amd. Sec. 1, Ch. 24, L. 1977; amd. Sec. 1, Ch. 201, L. 1977; R.C.M. 1947, 87-108(part).

39-51-2409. Witness fees. Witnesses subpoenaed pursuant to 39-51-2406 through 39-51-2410 shall be allowed fees at a rate fixed by the department. Such fees shall be deemed a part of the expense of administering this chapter.

History: En. Sec. 6 (f) to (i), Ch. 137, L. 1937; Subd. (a) amd. Sec. 2, Ch. 233, L. 1943; amd. Sec. 4, Ch. 368, L. 1975; amd. Sec. 1, Ch. 24, L. 1977; amd. Sec. 1, Ch. 201, L. 1977; R.C.M. 1947, 87-108(b); amd. Sec. 1, Ch. 349, L. 1981.

Cross-References

Witness fees and costs, 25-10-201; Title 26, ch. 2, part 5.

"Department" defined, 39-51-201.

39-51-2410. Finality of board's decision — judicial review. (1) Any decision of the board in the absence of an appeal therefrom as herein provided shall become final 30 days after the date of notification or mailing thereof and judicial review shall be permitted only after any party claiming to be aggrieved has exhausted all remedies before the board. The department is deemed to be a party to any judicial action involving any such decision and may be represented in any such action by an attorney employed by the department or, at the department's request, by the attorney general.

(2) Within 30 days after the date of notification or mailing of the decision of the board, any party aggrieved thereby may secure judicial review thereof by commencing an action in the district court of the county in which said party resides and in which action any other party to the proceeding before the board shall be made a defendant. In such action a petition, which need not be verified but which shall state the grounds upon which a review is sought, shall be served upon the commissioner of labor and industry and all interested parties in the manner provided in the Montana Rules of Civil Procedure.

(3) The department shall certify and file with said court all documents and papers and a record of all testimony taken in the matter, together with the board's findings of fact and decision. The board may also in its discretion certify to such court questions of law involved in any decision by it.

(4) Whenever the department seeks review of a decision of the board, all interested parties shall be served with a copy of its petition together with all documents filed with the court.

(5) In any judicial proceeding under 39-51-2406 through 39-51-2410, the findings of the board as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive and the jurisdiction of said court shall be confined to questions of law. Such action and the questions so certified shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under the workers' compensation law of this state.

(6) An appeal may be taken from the decision of the district court to the supreme court of Montana in the same manner, but not inconsistent with the provisions of this chapter, as is provided in civil cases. It shall not be necessary in any judicial proceeding under this section to enter exceptions to the rulings of the board and no bond shall be required for entering such appeal. Upon the final determination of such judicial proceeding, the department shall enter an order in accordance with such determination.

History: **En. Sec. 6 (f) to (i), Ch. 137, L. 1937; Subd. (a) amd. Sec. 2, Ch. 233, L. 1943; amd. Sec. 4, Ch. 368, L. 1975; amd. Sec. 1, Ch. 24, L. 1977; amd. Sec. 1, Ch. 201, L. 1977; R.C.M. 1947, 87-108(c), (d); amd. Sec. 4, Ch. 349, L. 1981; amd. Sec. 14, Ch. 125, L. 1985; amd. Sec. 20, Ch. 234, L. 1987.**

Cross-References

"Board" defined, 39-51-201.

"Department" defined, 39-51-201.

Part 25

Extended Benefits

39-51-2501. Definitions. As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Extended benefit period" means a period which:

(a) begins with the third week after a week for which there is a state "on" indicator, provided that no extended benefit period may begin by reason of a state "on" indicator before the 14th week following the end of a prior extended benefit period which was in effect with respect to this state; and

(b) ends with the third week after the first week for which there is a state "off" indicator or the 13th consecutive week of such period.

(2) (a) "Rate of insured unemployment", for purposes of 39-51-2504 and 39-51-2505, means the percentage derived by dividing the average weekly number of individuals filing claims for regular benefits in this state for weeks of unemployment with respect to the most recent 13-consecutive-week period, as determined by the department on the basis of its reports to the U.S. secretary of labor, by the average monthly employment covered under this chapter for the first 4 of the most recent 6 completed calendar quarters ending before the end of such 13-week period.

(b) Computations required by the provisions of subsection (2)(a) shall be made by the department in accordance with regulations prescribed by the U.S. secretary of labor.

(3) "Regular benefits" means benefits payable to an individual under this chapter or under any other state law, including benefits payable to federal civilian employees and to ex-service personnel pursuant to 5 U.S.C. chapter 85, other than extended benefits.

(4) "Extended benefits" means benefits, including benefits payable to federal civilian employees and to ex-service personnel pursuant to 5 U.S.C. chapter 85, payable to an individual under the provisions of this part for weeks of unemployment in the individual's eligibility period.

(5) "Eligibility period", relating to extended benefits, means the period consisting of the weeks in the individual's benefit year which begin in an extended benefit period and, if the individual's benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(6) "Exhaustee" means an individual who, with respect to any week of unemployment in the eligibility period:

(a) has received, prior to such week, all of the regular benefits that were available under this chapter or any other state law, including dependents' allowances and benefits payable to federal civilian employees and ex-service personnel under 5 U.S.C. chapter 85, in the current benefit year that includes such week; provided that, for the purposes of this subsection, an individual shall be deemed to have received all of the regular benefits that were available although, as a result of a pending appeal with respect to wages that were not considered in the original monetary determination of the benefit year, the individual may subsequently be determined to be entitled to added regular benefits;

(b) the benefit year having expired prior to such week, has no or insufficient wages on the basis of which the individual could establish a new benefit year that would include such week;

(c) has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act and such other federal laws as are specified in regulations issued by the U.S. secretary of labor; and

(d) has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada, but if the individual is seeking such benefits and the appropriate agency finally determines that the individual is not entitled to benefits under such law, the individual is considered an exhaustee.

(7) "State law" means the unemployment insurance law of any state approved by the U.S. secretary of labor under section 3304 of the Internal Revenue Code of 1954.

History: **En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(a)(1), (a)(6) thru (a)(11), (f)(2); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 9, Sp. L. 1981; amd. Sec. 4, Ch. 84, L. 1983; amd. Sec. 21, Ch. 234, L. 1987.**

Cross-References

"Benefits" defined, 39-51-201.
"Department" defined, 39-51-201.
"State" defined, 39-51-201.
"Week" defined, 39-51-201.

39-51-2502. Repealed. Sec. 5, Ch. 9, Sp. L. 1981.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(a)(2).

39-51-2503. Repealed. Sec. 5, Ch. 9, Sp. L. 1981.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(a)(3).

39-51-2504. State "on" indicator — when. There is a state "on" indicator for this state for a week if the department determines, in accordance with the regulations of the U.S. secretary of labor, that:

(1) (a) the rate of insured unemployment equals or exceeds 5% for any such week and the immediately preceding 12 weeks; and

(b) the insured unemployment rate equals or exceeds 120% of the average of such rates for the corresponding 13-week period ending in each of the preceding 2 calendar years; or

(2) if the rate of insured unemployment for such week is 5% or more but the average of such rates for the corresponding 13-week period ending in each of the preceding 2 calendar years is less than 120%, the insured unemployment rate for such week and the immediately preceding 12 weeks is 6% or more.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(a)(4); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 2, Ch. 9, Sp. L. 1981.

Cross-References

"Department" defined, 39-51-201.

"Week" defined, 39-51-201.

39-51-2505. State "off" indicator — when. There is a state "off" indicator for this state for a week if the department determines, in accordance with the regulations of the U.S. secretary of labor, that:

(1) for the period consisting of such week and the immediately preceding 12 weeks the rate of insured unemployment (not seasonally adjusted) under this chapter is less than 5%; or

(2) the average of such rates for the corresponding 13-week period ending in each of the preceding 2 calendar years is less than 120%.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(a)(5); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 3, Ch. 9, Sp. L. 1981.

Cross-References

"Department" defined, 39-51-201.

"Week" defined, 39-51-201.

39-51-2506. Beginning and termination of extended benefit period — announcement of. Whenever an extended benefit period is to become effective in this state as a result of a state "on" indicator, or an extended benefit period is to be terminated in this state as a result of state "off" indicators, the department shall make an appropriate public announcement.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(f)(1); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 4, Ch. 9, Sp. L. 1981.

Cross-References

"Benefits" defined, 39-51-201.

"Department" defined, 39-51-201.

39-51-2507. Effect of state law provisions relating to regular benefits on claims for and the payment of extended benefits. Except when the result would be inconsistent with the other provisions of this part, as provided in the regulations of the department, the provisions of this chapter which apply to claims for or the payment of regular benefits shall apply to claims for and the payment of extended benefits.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(b); amd. Sec. 1, Ch. 349, L. 1981.

Cross-References

"Benefits" defined, 39-51-201.

"Department" defined, 39-51-201.

39-51-2508. Eligibility requirements for extended benefits — disqualifications — acceptance of suitable work. (1) An individual shall be eligible to receive extended benefits with respect to any week of unemployment in this eligibility period only if the department finds that with respect to such week:

(a) he is an exhaustee, as defined in 39-51-2501(6);

(b) he is not disqualified for the receipt of regular benefits pursuant to part 23 of this chapter and, if he is disqualified, he satisfies the requirements for requalification in that part; and

(c) he has satisfied the other requirements of this chapter for the receipt of regular benefits that are applicable to individuals claiming extended benefits.

(2) In addition to the disqualifications provided for in subsection (1)(b), an individual is disqualified for extended benefits if he fails to seek work. Such disqualification continues for the week in which such failure occurs and until the individual has performed services, other than self-employment, for which remuneration is received equal to or in excess of his weekly benefit amount in 4 separate weeks subsequent to the date the act causing the disqualification occurred.

(3) A regular benefit claimant who is disqualified for gross misconduct under 39-51-2303(2) may not be paid extended benefits unless he has earned at least eight times the weekly benefit amount after the date of such disqualification.

(4) A regular benefit claimant who voluntarily leaves work to attend school and, pursuant to 39-51-2302(3), requalifies for regular benefits may not

be paid extended benefits unless he has earned at least six times the weekly benefit amount.

(5) For the purposes of determining eligibility for extended benefits, the department shall by rule define the term "suitable work". Such definition shall be in accordance with the definition required by the Omnibus Reconciliation Act of 1980, P.L. 96-499, and as may be amended after March 19, 1981.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(c); amd. Sec. 1, Ch. 99, L. 1981; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 272, L. 1983.

Cross-References

"Benefits" defined, 39-51-201.
"Department" defined, 39-51-201.
"Week" defined, 39-51-201.
"Weekly benefit amount" defined, 39-51-201.

39-51-2509. Weekly extended benefit amount. The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit amount payable to him during his applicable benefit year.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(d).

Cross-References

"Week" defined, 39-51-201.
"Weekly benefit amount" defined, 39-51-201.

39-51-2510. Total extended benefit amount. The total extended benefit amount payable to any eligible individual with respect to his applicable benefit year shall be the least of the following amounts:

(1) 50% of the total amount of regular benefits which were payable to him under this chapter in his applicable benefit year;

(2) 13 times his weekly benefit amount which was payable to him under this chapter for a week of total unemployment in the applicable benefit year.

History: En. Sec. 3 (d), Ch. 137, L. 1937; amd. Sec. 1, Ch. 137, L. 1939; amd. Sec. 1, Ch. 164, L. 1941; amd. Sec. 1, Ch. 245, L. 1947; amd. Sec. 1, Ch. 178, L. 1949; amd. Sec. 2, Ch. 191, L. 1953; amd. Sec. 3, Ch. 140, L. 1957; amd. Sec. 2, Ch. 156, L. 1961; amd. Sec. 2, Ch. 4, Ex. L. 1969; amd. Sec. 1, Ch. 104, L. 1971; amd. Sec. 1, Ch. 3, L. 1975; amd. Sec. 1, Ch. 368, L. 1975; amd. Sec. 2, Ch. 528, L. 1977; R.C.M. 1947, 87-104(e).

Cross-References

"Benefit year" defined, 39-51-201.
"Benefits" defined, 39-51-201.
"State" defined, 39-51-201.
"Week" defined, 39-51-201.
"Weekly benefit amount" defined, 39-51-201.

39-51-2511. Extended benefits filed interstate. Except during the first 2 weeks of an extended benefit period, no extended benefits will be paid to an individual filing from a state in which the state indicator is "off".

History: En. Sec. 1, Ch. 58, L. 1981.

Part 26

Trade Readjustment

39-51-2601. Limitations on weeks of combined extended benefits and trade readjustment allowances. Notwithstanding any other provisions of this chapter, if the benefit year of any individual ends within an extended benefit period, the remaining balance of extended benefits that such individual would but for this section be entitled to receive in that extended benefit period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced (but not below zero) by the product of the number of weeks for which the individual received trade readjustment allowances within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.

History: **En. Sec. 2, Ch. 7, Sp. L. 1981.**

39-51-2602. Approved trade readjustment training. (1) Notwithstanding any other provisions of this chapter, no otherwise eligible individual may be denied benefits for any week:

(a) because he is in training approved under Section 236(a)(1) of the federal Trade Act of 1974;

(b) in which he is in such approved training by reason of leaving work to enter such training if the work left is not suitable employment; or

(c) because of the application to any such week in training of provisions in this chapter or any federal unemployment insurance law administered by this agency, relating to availability for work, active search for work, or refusal to accept work.

(2) For purposes of this section, "suitable employment" means work of a substantially equal or higher skill level than the individual's past adversely affected employment, as defined for purposes of the federal Trade Act of 1974, and for which the wages are not less than 80% of the individual's average weekly wage as determined for the purposes of the federal Trade Act of 1974.

History: **En. Sec. 1, Ch. 7, Sp. L. 1981.**

Parts 27 through 30 reserved

Part 31

Protections and Limitations on Rights and Benefits

39-51-3101. Protection against self-incrimination. No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the department or board, the chairman of an appeal tribunal, or any duly authorized representative of either of them or in obedience to the subpoena of the department or board or any member thereof or any duly authorized representative of the department in any cause or proceeding before the department or board on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture, but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

History: **En. Subd. (h), Sec. 11, Ch. 137, L. 1937; amd. Sec. 16, Ch. 368, L. 1975; R.C.M. 1947, 87-127; amd. Sec. 1, Ch. 349, L. 1981.**

Cross-References
Self-incrimination, Art. II, sec. 25, Mont. Const.
"Board" defined, 39-51-201.
"Department" defined, 39-51-201.

39-51-3102. Certain agreements in violation of chapter void. (1) Any agreement by an individual to waive, release, or commute his rights to benefits or any other rights under this chapter shall be void.

(2) Any agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions required under this chapter from such employer shall be void.

History: En. Subd. (a), Sec. 15, Ch. 137, L. 1937; amd. Sec. 9, Ch. 164, L. 1941; R.C.M. 1947, 87-141(part).

Cross-References
"Benefits" defined, 39-51-201.
"Contributions" defined, 39-51-201.

39-51-3103. Employer prohibited from making, requiring, or accepting deduction from wages or requiring or accepting waiver of rights under chapter — penalty for violation. (1) No employer shall directly or indirectly make or require or accept any deduction from wages to finance the employer's contributions required from him or require or accept any waiver of any right hereunder by an individual in his employ.

(2) Any employer or officer or agent of an employer who violates any provision of this section or 39-51-3102 shall, for each offense, be fined not more than $1,000 or be imprisoned for not more than 6 months or both.

History: En. Subd. (a), Sec. 15, Ch. 137, L. 1937; amd. Sec. 9, Ch. 164, L. 1941; R.C.M. 1947, 87-141(part).

Cross-References
"Contributions" defined, 39-51-201.
"Wages" defined, 39-51-201.
Classification of offenses, 45-1-201.
"Misdemeanor" defined, 45-2-101.

39-51-3104. Limitation of fees in claim for benefits — penalty for violation. (1) No individual claiming benefits shall be charged fees of any kind in any proceeding under this chapter by the department or its representatives or by any court or any officer thereof.

(2) Any individual claiming benefits in any proceeding before the chairman of an appeal tribunal or the department or its representatives, the board, or a court may be represented by counsel or other duly authorized agent, but no such counsel or agents shall either charge or receive for such services more than an amount approved by the department or board.

(3) Any person who violates any provision of this section shall, for each such offense, be fined not more than $500 or imprisoned for not more than 6 months or both.

History: En. Subd. (b), Sec. 15, Ch. 137, L. 1937; amd. Sec. 9, Ch. 164, L. 1941; amd. Sec. 29, Ch. 368, L. 1975; R.C.M. 1947, 87-142; amd. Sec. 1, Ch. 349, L. 1981.

Cross-References
"Benefits" defined, 39-51-201.
"Board" defined, 39-51-201.
"Department" defined, 39-51-201.
Classification of offenses, 45-1-201.
"Misdemeanor" defined, 45-2-101.

39-51-3105. Assignment, pledge, or encumbrance of right to benefits void — benefits exempt from levy, execution, attachment, or other remedy for collection of debt — exception. Any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this chapter shall be void, and such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt, and benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts except as provided in 39-51-3106. Any waiver of any exemption provided for in this section shall be void.

History: **En. Subd. (c), Sec. 15, Ch. 137, L. 1937; amd. Sec. 9, Ch. 164, L. 1941; R.C.M. 1947, 87-143; amd. Sec. 22, Ch. 234, L. 1987.**

Cross-References

"Benefits" defined, 39-51-201.

39-51-3106. Child support interception of unemployment benefits. (1) For purposes of this section, the following definitions apply:

(a) "Unemployment benefits" means any benefits payable under the Montana unemployment insurance law, including amounts payable by the department pursuant to an agreement under any federal law providing for benefits, assistance, or allowances with respect to unemployment.

(b) "Child support obligations" includes only obligations that are being enforced pursuant to a plan described in section 454 of the Social Security Act which has been approved by the secretary of health and human services under Part D of Title IV of the Social Security Act.

(c) "State or local child support enforcement agency" means any agency of a state or political subdivision thereof operating pursuant to a plan provided for in subsection (1)(b).

(2) An individual filing a new claim for unemployment benefits shall, at the time of filing the claim, disclose whether or not he owes child support obligations. If an individual discloses that he owes child support obligations and the individual is determined to be eligible for unemployment benefits, the department shall notify the state or local child support enforcement agency enforcing such obligation that the individual has been determined to be eligible for unemployment benefits.

(3) The department shall deduct and withhold from any unemployment benefits payable to an individual owing child support obligations:

(a) the amount specified by the individual to the department to be deducted and withheld under this subsection if neither subsection (3)(b) nor (3)(c) is applicable;

(b) the amount, if any, determined pursuant to an agreement submitted to the department under section 454(20)(B)(i) of the Social Security Act by the state or local child support enforcement agency, unless subsection (3)(c) is applicable; or

(c) any amount otherwise required to be so deducted and withheld from such unemployment benefits pursuant to legal process, as that term is defined in section 462(e) of the Social Security Act, properly served upon the department.

(4) The department shall pay any amount deducted and withheld under subsection (3) to the appropriate state or local child support enforcement agency.

(5) Deductions may be made pursuant to this section only if appropriate arrangements have been made for reimbursement by the state or local child

support enforcement agency for the administrative costs incurred by the department under this section.

(6) Any amount deducted and withheld under subsection (3) must be treated as if it were paid to the individual as unemployment benefits and paid by such individual to the state or local child support enforcement agency in satisfaction of the individual's child support obligations.

History: En. Sec. 1, Ch. 8, Sp. L. 1981; amd. Sec. 5, Ch. 84, L. 1983.

Part 32

General Penalties

39-51-3201. Making false statement or representation or failing to disclose material fact in order to obtain or increase benefits — administrative penalty and remedy. A person who makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact in order to obtain or increase any benefit or other payment under this chapter or under an employment security law of any other state or territory or the federal government, either for himself or for any other person, is:

(1) disqualified for benefits thereafter for a period of not more than 52 weeks, beginning with the first compensable week following the date of such determination by the department, the length of time of the disqualification as herein described to be determined by the department in accordance with the severity of each case; and

(2) required to repay to the department, either directly or as authorized by the department, by offset of future benefits to which he may be entitled, or by a combination of both such methods, a sum equal to the amount wrongfully received by him plus interest at the rate of 18% a year computed from the time the false statement or representation or the failure to disclose a material fact occurred, except that future benefits may not be used to offset the interest due. However, he is not required to repay any amount wrongfully obtained more than 5 years prior to the date of the department's determination that he made false statements, willful nondisclosure, or misrepresentation.

History: En. Sec. 16, Ch. 137, L. 1937; amd. Sec. 1, Ch. 150, L. 1951; amd. Sec. 7, Ch. 164, L. 1955; amd. Sec. 10, Ch. 156, L. 1961; amd. Sec. 1, Ch. 38, L. 1969; amd. Sec. 1, Ch. 17, L. 1975; amd. Sec. 30, Ch. 368, L. 1975; amd. Sec. 1, Ch. 240, L. 1977; R.C.M. 1947, 87-145(1); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 226, L. 1985.

39-51-3202. Making false statement or representation or failing to disclose material fact in order to obtain or increase benefits — criminal penalty. (1) A person who, in order to obtain or increase for personal gain or for any other person benefits under this chapter or under an employment security law of any other state or territory or the federal government, knowingly makes a false statement or representation or knowingly fails to disclose a material fact is guilty of a crime under 45-7-203, and the department may cause criminal proceedings to be initiated against the person.

(2) A person will be required to repay to the department an amount as determined by 39-51-3201(2).

(3) For purposes of this section, restitution awarded under this section must include a sum equal to the amount wrongfully received plus 18% interest a year, notwithstanding the provisions of 25-9-205.

History: **En. Sec. 16, Ch. 137, L. 1937; amd. Sec. 1, Ch. 150, L. 1951; amd. Sec. 7, Ch. 164, L. 1955; amd. Sec. 10, Ch. 156, L. 1961; amd. Sec. 1, Ch. 38, L. 1969; amd. Sec. 1, Ch. 17, L. 1975; amd. Sec. 30, Ch. 368, L. 1975; amd. Sec. 1, Ch. 240, L. 1977; R.C.M. 1947, 87-145(2); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 23, Ch. 234, L. 1987.**

Cross-References

"Benefits" defined, 39-51-201.
"Department" defined, 39-51-201.
"State" defined, 39-51-201.
"Week" defined, 39-51-201.

39-51-3203. Obtaining benefits through deception or other fraudulent means — criminal penalty. A person who, through deception or other fraudulent means, obtains benefits which he is not entitled to under this chapter or under an employment security law of any other state or territory or the federal government or a person legally accountable for such conduct under 45-2-302 is guilty of a crime under 45-6-301, and a county attorney may initiate criminal proceedings against him.

History: **En. Sec. 16, Ch. 137, L. 1937; amd. Sec. 1, Ch. 150, L. 1951; amd. Sec. 7, Ch. 164, L. 1955; amd. Sec. 10, Ch. 156, L. 1961; amd. Sec. 1, Ch. 38, L. 1969; amd. Sec. 1, Ch. 17, L. 1975; amd. Sec. 30, Ch. 368, L. 1975; amd. Sec. 1, Ch. 240, L. 1977; R.C.M. 1947, 87-145(3).**

Cross-References

"Benefits" defined, 39-51-201.
"State" defined, 39-51-201.

39-51-3204. Employing unit making false statement or representation, failing to disclose material fact, or failing or refusing to make contributions or other payments, furnish reports, or permit inspection or copying of records — criminal penalty. Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false or who knowingly fails to disclose a material fact to prevent or reduce the payment of benefits to any individual entitled thereto or to avoid becoming or remaining subject hereto or to avoid or reduce any contribution or other payment required from an employing unit under this chapter or under the employment security law of any other state or territory or the federal government or who willfully fails or refuses to make any such contributions or other payment or to furnish any reports required hereunder or to produce or permit the inspection or copying of records as required hereunder shall be punished by a fine of not less than $50 or more than $500 or by imprisonment for not less than 3 days or more than 30 days in the county jail or by both such fine and imprisonment, and each such false statement or representation or failure to disclose a material fact and each day of such failure or refusal shall constitute a separate offense.

History: **En. Sec. 16, Ch. 137, L. 1937; amd. Sec. 1, Ch. 150, L. 1951; amd. Sec. 7, Ch. 164, L. 1955; amd. Sec. 10, Ch. 156, L. 1961; amd. Sec. 1, Ch. 38, L. 1969; amd. Sec. 1, Ch. 17, L. 1975; amd. Sec. 30, Ch. 368, L. 1975; amd. Sec. 1, Ch. 240, L. 1977; R.C.M. 1947, 87-145(4).**

Cross-References

"Benefits" defined, 39-51-201.
"Contributions" defined, 39-51-201.
"Employing unit" defined, 39-51-201.
"State" defined, 39-51-201.

39-51-3205. Criminal penalty for violations of chapter where no penalty prescribed. Any person who shall willfully violate any provision of this chapter or any order or rule thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this chapter and for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be punished by a fine of not less than $50 or more than $500 or by imprisonment for not less than 3 days or more than 30 days in the county jail or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

History: En. Sec. 16, Ch. 137, L. 1937; amd. Sec. 1, Ch. 150, L. 1951; amd. Sec. 7, Ch. 164, L. 1955; amd. Sec. 10, Ch. 156, L. 1961; amd. Sec. 1, Ch. 38, L. 1969; amd. Sec. 1, Ch. 17, L. 1975; amd. Sec. 30, Ch. 368, L. 1975; amd. Sec. 1, Ch. 240, L. 1977; R.C.M. 1947, 87-145(5).

Cross-References

"Benefits" defined, 39-51-201.
"Contributions" defined, 39-51-201.
"Department" defined, 39-51-201.
"Fund" defined, 39-51-201.
"Misdemeanor" defined, 45-2-101.

39-51-3206. Collection of benefit overpayments. A person who receives benefits not authorized by this chapter shall repay to the department either directly or, as authorized by the department, by offset of future benefits to which the claimant may be entitled, or by a combination of both methods, a sum equal to the amount of the overpayment. The sum is collectible in the manner provided in this chapter for the collection of past-due contributions unless the department finds that the benefits were received through no fault of the person and the recovery of the benefits would be against equity and good conscience. An action for collection of overpaid benefits must be brought within 5 years after the date of the overpayment. Notwithstanding any other provision of this chapter, the department may recover an overpayment of benefits paid to any individual under the laws of this state or another state or under an unemployment benefit program of the United States.

History: En. Sec. 16, Ch. 137, L. 1937; amd. Sec. 1, Ch. 150, L. 1951; amd. Sec. 7, Ch. 164, L. 1955; amd. Sec. 10, Ch. 156, L. 1961; amd. Sec. 1, Ch. 38, L. 1969; amd. Sec. 1, Ch. 17, L. 1975; amd. Sec. 30, Ch. 368, L. 1975; amd. Sec. 1, Ch. 240, L. 1977; R.C.M. 1947, 87-145(6); amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 50, Ch. 397, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 24, Ch. 234, L. 1987; amd. Sec. 56, Ch. 83, L. 1989.

Compiler's Comments

1989 Amendment: Near end substituted "the laws of this state or another state" for "this state or another state law".

39-51-3207. *(Temporary)* **Authority to determine uncollectibility of debts — transfer of debts for collection — liability for payment of fees and costs of collection.** (1) After making all reasonable efforts to collect unpaid contributions, assessments under 39-51-404(4), and penalties and interest thereon, or overpaid benefits under 39-51-3206 and interest thereon, the department may determine a debt to be uncollectible. Upon determining that a debt is uncollectible, the department may transfer the debt to the department of revenue for collection as provided in 17-4-104.

(2) Subject to approval by the department, reasonable fees or costs of collection incurred by the department of revenue may be added to the amount of the debt, including added fees or costs. The debtor is liable for repayment of the amount of the debt plus fees or costs added pursuant to this subsection. All money collected must be returned to the department to be applied to the debt, except that all fees or costs collected must be retained by the department of revenue. If less than the full amount of the debt is collected,

the department of revenue shall retain only a proportionate share of the collection fees or costs.

39-51-3207. *(Effective January 1, 1990)* **Authority to determine uncollectibility of debts — transfer of debts for collection — liability for payment of fees and costs of collection.** (1) After making all reasonable efforts to collect unpaid contributions, assessments under 39-51-404(4), and penalties and interest thereon, or overpaid benefits under 39-51-3206 and interest thereon, the department may determine a debt to be uncollectible. Upon determining that a debt is uncollectible, the department may transfer the debt to the state auditor for collection as provided in 17-4-104.

(2) Subject to approval by the department, reasonable fees or costs of collection incurred by the state auditor may be added to the amount of the debt, including added fees or costs. The debtor is liable for repayment of the amount of the debt plus fees or costs added pursuant to this subsection. All money collected must be returned to the department to be applied to the debt, except that all fees or costs collected must be retained by the state auditor. If less than the full amount of the debt is collected, the state auditor shall retain only a proportionate share of the collection fees or costs.

History: **En. Sec. 25, Ch. 234, L. 1987; amd. Sec. 8, Ch. 419, L. 1989.**

Compiler's Comments

1989 Amendment: Throughout section changed "department of revenue" to "state auditor". Amendment effective January 1, 1990.

CHAPTERS 52 THROUGH 70

RESERVED

CHAPTER 71

WORKERS' COMPENSATION

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Chapter Cross-References

The administration of justice, Art. II, sec. 16, Mont. Const.

Part 1

General Provisions

39-71-101. Short title. This chapter may be cited as the "Workers' Compensation Act".

History: En. Sec. 1, Ch. 96, L. 1915; re-en. Sec. 2816, R.C.M. 1921; re-en. Sec. 2816, R.C.M. 1935; amd. Sec. 29, Ch. 341, L. 1969; amd. Sec. 86, Ch. 23, L. 1975; R.C.M. 1947, 92-101(part); amd. Sec. 51, Ch. 397, L. 1979.

39-71-102. Reference to plans. Whenever compensation plan No. 1, 2, or 3 is referred to, such reference also includes all other sections which are applicable to the subject matter of such reference.

History: En. Sec. 1, Ch. 96, L. 1915; re-en. Sec. 2817, R.C.M. 1921; re-en. Sec. 2817, R.C.M. 1935; R.C.M. 1947, 92-102; amd. Sec. 52, Ch. 397, L. 1979.

Cross-References

Compensation plan No. 1, Title 39, ch. 71, part 21.

Compensation plan No. 2, Title 39, ch. 71, part 22.

Compensation plan No. 3, Title 39, ch. 71, part 23.

39-71-103. Compensation provisions. The compensation provisions of this chapter, whenever referred to, shall be held to include the provisions of compensation plan No. 1, 2, or 3 and all other sections of this chapter applicable to the same or any part thereof.

History: En. Sec. 1, Ch. 96, L. 1915; re-en. Sec. 2818, R.C.M. 1921; re-en. Sec. 2818, R.C.M. 1935; R.C.M. 1947, 92-103.

Cross-References

Compensation plan No. 1, Title 39, ch. 71, part 21.

Compensation plan No. 2, Title 39, ch. 71, part 22.

Compensation plan No. 3, Title 39, ch. 71, part 23.

39-71-104. Repealed. Sec. 68, Ch. 464, L. 1987.

History: **En. Sec. 24, Ch. 96, L. 1915; re-en. Sec. 2964, R.C.M. 1921; re-en. Sec. 2964, R.C.M. 1935; R.C.M. 1947, 92-838.**

39-71-105. Declaration of public policy. For the purposes of interpreting and applying Title 39, chapters 71 and 72, the following is the public policy of this state:

(1) It is an objective of the Montana workers' compensation system to provide, without regard to fault, wage supplement and medical benefits to a worker suffering from a work-related injury or disease. Wage-loss benefits are not intended to make an injured worker whole; they are intended to assist a worker at a reasonable cost to the employer. Within that limitation, the wage-loss benefit should bear a reasonable relationship to actual wages lost as a result of a work-related injury or disease.

(2) A worker's removal from the work force due to a work-related injury or disease has a negative impact on the worker, the worker's family, the employer, and the general public. Therefore, it is an objective of the workers' compensation system to return a worker to work as soon as possible after the worker has suffered a work-related injury or disease.

(3) Montana's workers' compensation and occupational disease insurance systems are intended to be primarily self-administering. Claimants should be able to speedily obtain benefits, and employers should be able to provide coverage at reasonably constant rates. To meet these objectives, the system must be designed to minimize reliance upon lawyers and the courts to obtain benefits and interpret liabilities.

(4) Title 39, chapters 71 and 72, must be construed according to their terms and not liberally in favor of any party.

History: **En. Sec. 1, Ch. 464, L. 1987.**

39-71-106 through 39-71-115 reserved.

39-71-116. Definitions. Unless the context otherwise requires, words and phrases employed in this chapter have the following meanings:

(1) "Average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the Montana department of labor and industry. It is established at the nearest whole dollar number and must be adopted by the department prior to July 1 of each year.

(2) "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

(b) an unmarried child under the age of 18 years;

(c) an unmarried child under the age of 22 years who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;

(d) an invalid child over the age of 18 years who is dependent upon the decedent for support at the time of injury;

(e) a parent who is dependent upon the decedent for support at the time of the injury (however, such a parent is a beneficiary only when no beneficiary, as defined in subsections (2)(a) through (2)(d) of this section, exists); and

(f) a brother or sister under the age of 18 years if dependent upon the decedent for support at the time of the injury (however, such a brother or sister is a beneficiary only until the age of 18 years and only when no beneficiary, as defined in subsections (2)(a) through (2)(e) of this section, exists).

(3) "Casual employment" means employment not in the usual course of trade, business, profession, or occupation of the employer.

(4) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.

(5) "Days" means calendar days, unless otherwise specified.

(6) "Department" means the department of labor and industry.

(7) "Fiscal year" means the period of time between July 1 and the succeeding June 30.

(8) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, the state fund under compensation plan No. 3, or the uninsured employers' fund provided for in part 5 of this chapter.

(9) "Invalid" means one who is physically or mentally incapacitated.

(10) "Maximum healing" means the status reached when a worker is as far restored medically as the permanent character of the work-related injury will permit.

(11) "Order" means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at or decision made by the department.

(12) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer shall not have operated a sufficient or any length of time during such calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made by the department for any employer starting in business if no average payrolls are available. This estimate is to be adjusted by additional payment by the employer or refund by the department, as the case may actually be, on December 31 of such current year. An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

(13) "Permanent partial disability" means a condition, after a worker has reached maximum healing, in which a worker:

(a) has a medically determined physical restriction as a result of an injury as defined in 39-71-119; and

(b) is able to return to work in the worker's job pool pursuant to one of the options set forth in 39-71-1012 but suffers impairment or partial wage loss, or both.

(14) "Permanent total disability" means a condition resulting from injury as defined in this chapter, after a worker reaches maximum healing, in which a worker is unable to return to work in the worker's job pool after exhausting all options set forth in 39-71-1012.

(15) The term "physician" includes "surgeon" and in either case means one authorized by law to practice his profession in this state.

(16) The "plant of the employer" includes the place of business of a third person while the employer has access to or control over such place of business for the purpose of carrying on his usual trade, business, or occupation.

(17) "Public corporation" means the state or any county, municipal corporation, school district, city, city under commission form of government or special charter, town, or village.

(18) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

(19) "Reasonably safe tools and appliances" are such tools and appliances as are adapted to and are reasonably safe for use for the particular purpose for which they are furnished.

(20) "Temporary total disability" means a condition resulting from an injury as defined in this chapter that results in total loss of wages and exists until the injured worker reaches maximum healing.

(21) "Year", unless otherwise specified, means calendar year.

History: Ap. p. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2853, R.C.M. 1921; re-en. Sec. 2853, R.C.M. 1935; Sec. 92-401, R.C.M. 1947; (1)En. 92-423.2 by Sec. 1, Ch. 445, L. 1973; Sec. 92-423.2, R.C.M. 1947; (2)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2865, R.C.M. 1921; amd. Sec. 4, Ch. 121, L. 1925; re-en. Sec. 2865, R.C.M. 1935; amd. Sec. 1, Ch. 92, L. 1969; amd. Sec. 1, Ch. 331, L. 1973; amd. Sec. 1, Ch. 269, L. 1974; amd. Sec. 1, Ch. 46, L. 1975; Sec. 92-413, R.C.M. 1947; (3)Ap. p. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2888, R.C.M. 1921; re-en. Sec. 2888, R.C.M. 1935; Sec. 92-436, R.C.M. 1947; Ap. p. Sec. 12, Ch. 235, L. 1947; Sec. 92-1121.1, R.C.M. 1947; (4)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2869, R.C.M. 1921; re-en. Sec. 2869, R.C.M. 1935; amd. Sec. 2, Ch. 92, L. 1969; Sec. 92-417, R.C.M. 1947; (5)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2878, R.C.M. 1921; re-en. Sec. 2878, R.C.M. 1935; amd. Sec. 7, Ch. 23, L. 1975; Sec. 92-426, R.C.M. 1947; (6), (22)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2885, R.C.M. 1921; re-en. Sec. 2885, R.C.M. 1935; Sec. 92-433, R.C.M. 1947; (7)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2877, R.C.M. 1921; re-en. Sec. 2877, R.C.M. 1935; amd. Sec. 1, Ch. 33, L. 1974; Sec. 92-425, R.C.M. 1947; (8)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2887, R.C.M. 1921; re-en. Sec. 2887, R.C.M. 1935; amd. Sec. 7, Ch. 550, L. 1977; Sec. 92-435, R.C.M. 1947; (9)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2868, R.C.M. 1921; re-en. Sec. 2868, R.C.M. 1935; Sec. 92-416, R.C.M. 1947; (10)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2881, R.C.M. 1921; re-en. Sec. 2881, R.C.M. 1935; amd. Sec. 8, Ch. 23, L. 1975; Sec. 92-429, R.C.M. 1947; (11)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2884, R.C.M. 1921; re-en. Sec. 2884, R.C.M. 1935; amd. Sec. 9, Ch. 23, L. 1975; Sec. 92-432, R.C.M. 1947; (12)En. 92-440 by Sec. 1, Ch. 108, L. 1973; Sec. 92-440, R.C.M. 1947; (13)En. 92-441 by Sec. 1, Ch. 109, L. 1973; Sec. 92-441, R.C.M. 1947; (14)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2873, R.C.M. 1921; re-en. Sec. 2873, R.C.M. 1935; Sec. 92-421, R.C.M. 1947; (15)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2889, R.C.M. 1921; re-en. Sec. 2889, R.C.M. 1935; Sec. 92-437, R.C.M. 1947; (16)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2886, R.C.M. 1921; re-en. Sec. 2886, R.C.M,. 1935; Sec. 92-434, R.C.M. 1947; (17)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2860, R.C.M. 1921; re-en. Sec. 2860, R.C.M. 1935; Sec. 92-408, R.C.M. 1947; (18)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2861, R.C.M. 1921; re-en. Sec. 2861, R.C.M. 1935; Sec. 92-409, R.C.M. 1947; (19)En. 92-439 by Sec. 1, Ch. 107, L. 1973; Sec. 92-439, R.C.M. 1947; (20)En. 92-423.1 by Sec. 1, Ch. 444, L. 1973; Sec. 92-423.1, R.C.M. 1947; (21)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2876, R.C.M. 1921; re-en. Sec. 2876, R.C.M. 1935; Sec. 92-424, R.C.M. 1947; R.C.M. 1947, 92-401, 92-408, 92-409, 92-413, 92-416, 92-417, 92-421, 92-423.1, 92-423.2, 92-424, 92-425, 92-426, 92-429, 92-432, 92-433, 92-434, 92-435, 92-436, 92-437, 92-439, 92-440, 92-441, 92-1121.1(part); amd. Sec. 53, Ch. 397, L. 1979; amd. Sec. 1, Ch. 47, L. 1981; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 374, L. 1985; amd. Sec. 2, Ch. 464, L. 1987; amd. Sec. 7, Ch. 333, L. 1989; amd. Sec. 13, Ch. 613, L. 1989.

Compiler's Comments

1989 Amendments: Chapter 333 at end of definition of payroll inserted requirement that payroll be computed by calculating all wages, as defined in 39-71-123, that are paid by employer; and made minor changes in phraseology. Amendment effective July 1, 1989.

Chapter 613 throughout section changed "division of workers' compensation" and "division" to "department"; deleted definition of Division; and in definition of insurer changed "state compensation insurance fund" to "state fund". Amendment effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

39-71-117. Employer defined. "Employer" means:

(1) the state and each county, city and county, city school district, irrigation district, all other districts established by law, and all public corporations and quasi-public corporations and public agencies therein and every

person, every prime contractor, and every firm, voluntary association, and private corporation, including any public service corporation and including an independent contractor who has any person in service under any appointment or contract of hire, expressed or implied, oral or written, and the legal representative of any deceased employer or the receiver or trustee thereof; and

(2) any association, corporation, or organization that seeks permission and meets the requirements set by the department by rule for a group of individual employers to operate as self-insured under plan No. 1 of this chapter.

History: En. 92-410.1 by Sec. 1, Ch. 154, L. 1973; R.C.M. 1947, 92-410.1(part); amd. Sec. 1, Ch. 480, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

39-71-118. Employee, worker, and workman defined. (1) The terms "employee", "workman", or "worker" mean:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations while rendering actual service for such corporations for pay. Casual employees as defined by 39-71-116 are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic service is excluded.

(b) a recipient of general relief who is performing work for a county of this state under the provisions of 53-3-303 through 53-3-305 and any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs as outlined above while they are on the premises of a public school or community college.

(d) students enrolled and in attendance in programs of vocational-technical education at designated vocational-technical centers; or

(e) an airman or other person employed as a volunteer under 67-2-105.

(2) (a) If the employer is a partnership or sole proprietorship, such employer may elect to include as an employee within the provisions of this chapter any member of such partnership or the owner of the sole proprietorship devoting full time to the partnership or proprietorship business.

(b) In the event of such election, the employer must serve upon the employer's insurer written notice naming the partners or sole proprietor to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (2)(d). A partner or sole proprietor is not considered an employee within this chapter until such notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of weekly wage for weekly compensation benefits, the electing employer may elect not less than $900 a month and not more than 1 ½ times the average weekly wage as defined in this chapter.

History: En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2863, R.C.M. 1921; amd. Sec. 3, Ch. 121, L. 1925; amd. Sec. 1, Ch. 139, L. 1931; re-en. Sec. 2863, R.C.M. 1935; amd. Sec. 3, Ch. 88, L. 1945; amd. Sec. 1, Ch. 153, L. 1963; amd. Sec. 1, Ch. 308, L. 1971; amd. Sec. 1, Ch. 44, L. 1975; amd. Sec. 1, Ch. 281, L. 1977; R.C.M. 1947, 92-411; amd. Sec. 1, Ch. 21, L. 1981; amd. Sec. 2, Ch. 336, L. 1985; amd. Sec. 20, Ch. 670, L. 1985; amd. Sec. 96, Ch. 370, L. 1987; amd. Sec. 67, Ch. 464, L. 1987; amd. Sec. 25, Ch. 658, L. 1987; amd. Sec. 11, Ch. 333, L. 1989.

Compiler's Comments

1989 Amendment: In (2)(b), at end of first sentence, inserted "and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (2)(d)"; inserted (2)(c) requiring change in elected wages to be in writing and effective at start of next quarter following notification; in (2)(d) inserted first sentence requiring weekly benefits to be based on amount of elected wages, subject to minimum and maximum limitations of this subsection and near middle of second sentence substituted "the electing employer may elect not less than" for "the insurance carrier shall assume a salary or wage of such electing employee to be not less than"; and made minor changes in form and phraseology. Amendment effective July 1, 1989.

Cross-References

"Independent contractor" defined, 39-71-120.

39-71-119. Injury and accident defined. (1) "Injury" or "injured" means:

(a) internal or external physical harm to the body;

(b) damage to prosthetic devices or appliances, except for damage to eyeglasses, contact lenses, dentures, or hearing aids; or

(c) death.

(2) An injury is caused by an accident. An accident is:

(a) an unexpected traumatic incident or unusual strain;

(b) identifiable by time and place of occurrence;

(c) identifiable by member or part of the body affected; and

(d) caused by a specific event on a single day or during a single work shift.

(3) "Injury" or "injured" does not mean a physical or mental condition arising from:

(a) emotional or mental stress; or

(b) a nonphysical stimulus or activity.

(4) "Injury" or "injured" does not include a disease that is not caused by an accident.

(5) A cardiovascular, pulmonary, respiratory, or other disease, cerebrovascular accident, or myocardial infarction suffered by a worker is an injury only if the accident is the primary cause of the physical harm in relation to other factors contributing to the physical harm.

History: Ap. p. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2870, R.C.M. 1921; re-en. Sec. 2870, R.C.M. 1935; amd. Sec. 6, Ch. 162, L. 1961; amd. Sec. 6, Ch. 149, L. 1965; amd. Sec. 1, Ch. 270, L. 1967; amd. Sec. 1, Ch. 488, L. 1973; Sec. 92-418, R.C.M. 1947; Ap. p. Sec. 2, Ch. 488, L. 1973; Sec. 92-418.1, R.C.M. 1947; (3)En. Sec. 6, Ch. 96, L. 1915; re-en. Sec. 2864, R.C.M.

1921; re-en. Sec. 2864, R.C.M. 1935; Sec. 92-412, R.C.M. 1947; R.C.M. 1947, 92-412, 92-418, 92-418.1; amd. Sec. 3, Ch. 464, L. 1987.

39-71-120. Independent contractor defined. (1) An "independent contractor" is one who renders service in the course of an occupation and:

(a) has been and will continue to be free from control or direction over the performance of the services, both under his contract and in fact; and

(b) is engaged in an independently established trade, occupation, profession, or business.

(2) An individual performing services for remuneration is considered to be an employee under this chapter unless the requirements of subsection (1) are met.

History: En. 92-438.1 by Sec. 1, Ch. 251, L. 1973; R.C.M. 1947, 92-438.1; amd. Sec. 5, Ch. 314, L. 1987.

39-71-121. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. Sec. 2, Ch. 47, L. 1981.

39-71-122. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. Sec. 3, Ch. 47, L. 1981.

39-71-123. Wages defined. (1) "Wages" means the gross remuneration paid in money, or in a substitute for money, for services rendered by an employee. Wages include but are not limited to:

(a) commissions, bonuses, and remuneration at the regular hourly rate for overtime work, holidays, vacations, and sickness periods;

(b) board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is based on its actual value; and

(c) payments made to an employee on any basis other than time worked, including but not limited to piecework, an incentive plan, or profit-sharing arrangement.

(2) Wages do not include:

(a) employee travel expense reimbursements or allowances for meals, lodging, travel, and subsistence;

(b) special rewards for individual invention or discovery;

(c) tips and other gratuities received by the employee in excess of those documented to the employer for tax purposes;

(d) contributions made by the employer to a group insurance or pension plan; or

(e) vacation or sick leave benefits accrued but not paid.

(3) For compensation benefit purposes, the average actual earnings for the four pay periods immediately preceding the injury are the employee's wages, except if:

(a) the term of employment for the same employer is less than four pay periods, in which case the employee's wages are the hourly rate times the number of hours in a week for which the employee was hired to work; or

(b) for good cause shown by the claimant, the use of the four pay periods does not accurately reflect the claimant's employment history with the employer, in which case the insurer may use additional pay periods.

(4) (a) For the purpose of calculating compensation benefits for an employee working concurrent employments, the average actual wages must be calculated as provided in subsection (3).

(b) The compensation benefits for a covered volunteer must be based on the average actual wages in his regular employment, except self-employment as a sole proprietor or partner who elected not to be covered, from which he is disabled by the injury incurred.

(c) The compensation benefits for an employee working at two or more concurrent remunerated employments must be based on the aggregate of average actual wages of all employments, except self-employment as a sole proprietor or partner who elected not to be covered, from which the employee is disabled by the injury incurred.

History: En. Sec. 4, Ch. 464, L. 1987; amd. Sec. 12, Ch. 333, L. 1989.

Compiler's Comments

1989 Amendment: Inserted (4) requiring that for purpose of calculating compensation benefits for employee working concurrent employments, average actual earnings must be calculated as provided in subsection (3) and stating methods for calculating benefits for covered volunteer and employee working two or more concurrent employments. Amendment effective July 1, 1989.

Part 2

Administrative Provisions
Division of Workers' Compensation

39-71-201. Administration fund. (1) A workers' compensation administration fund is established out of which all costs of administering the Workers' Compensation and Occupational Disease Acts and the various occupational safety acts the department must administer are to be paid upon lawful appropriation. The following money collected by the department must be deposited in the state treasury to the credit of the workers' compensation administrative fund and must be used for the administrative expenses of the department:

(a) all fees and penalties provided in 39-71-205 and 39-71-304;

(b) all fees paid for inspection of boilers and issuance of licenses to operating engineers as required by law;

(c) all fees paid from an assessment on each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund. The assessments must be levied against the preceding calendar year's gross annual payroll of the plan No. 1 employers and the gross annual direct premiums collected in Montana on the policies of the plan No. 2 insurers, insuring employers covered under the chapter, during the preceding calendar year. However, no assessment of the plan No. 1 employer or plan No. 2 insurer may be less than $200. The assessments must be sufficient to fund the direct costs identified to the three plans and an equitable portion of the indirect costs based on the ratio of the preceding fiscal year's indirect costs distributed to the plans, using proper accounting and cost allocation procedures. Plan No. 3 must be assessed an amount sufficient to fund its direct costs and an equitable portion of the indirect costs as referred to above. Other sources of revenue, including unexpended funds from the preceding fiscal year, must be used to reduce the costs before levying the assessments.

(2) The administration fund must be debited with expenses incurred by the department in the general administration of the provisions of this chapter, including the salaries of its members, officers, and employees and the

travel expenses of the members, officers, and employees, as provided for in 2-18-501 through 2-18-503, as amended, incurred while on the business of the department either within or without the state.

(3) Disbursements from the administration money must be made after being approved by the department upon claim therefor.

History: En. 92-116.1 by Sec. 1, Ch. 253, L. 1973; amd. Sec. 1, Ch. 318, L. 1975; amd. Sec. 28, Ch. 453, L. 1977; R.C.M. 1947, 92-116.1; amd. Sec. 18, Ch. 104, L. 1979; amd. Sec. 28, Ch. 557, L. 1987; amd. Sec. 14, Ch. 613, L. 1989.

Compiler's Comments

1989 Amendment: Throughout section changed "division" to "department"; in (1)(c) changed "state insurance fund" to "state fund"; and made minor changes in phraseology. Amendment effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

"Division" defined, 39-71-116.

"Insurer" defined, 39-71-116.

"Payroll" defined, 39-71-116.

"Year" defined, 39-71-116.

"Employer" defined, 39-71-117.

Compensation plan No. 1, Title 39, ch. 71, part 21.

Compensation plan No. 2, Title 39, ch. 71, part 22.

Compensation plan No. 3, Title 39, ch. 71, part 23.

39-71-202. Office of department. The department shall keep its principal office in the capital of the state. It may rent or lease quarters for the conduct of its administrative duties.

History: En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2826, R.C.M. 1921; re-en. Sec. 2826, R.C.M. 1935; amd. Sec. 1, Ch. 234, L. 1969; amd. Sec. 1, Ch. 23, L. 1975; R.C.M. 1947, 92-111; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Division" defined, 39-71-116.

39-71-203. Powers of department — rules. (1) The department is hereby vested with full power, authority, and jurisdiction to do and perform any and all things that are necessary or convenient in the exercise of any power, authority, or jurisdiction conferred upon it under this chapter.

(2) The department may adopt rules to carry out the provisions of this chapter.

History: En. Sec. 18, Ch. 96, L. 1915; re-en. Sec. 2940, R.C.M. 1921; re-en. Sec. 2940, R.C.M. 1935; amd. Sec. 26, Ch. 23, L. 1975; R.C.M. 1947, 92-814; amd. Sec. 5, Ch. 464, L. 1987; amd. Sec. 1, Ch. 525, L. 1987; amd. Sec. 15, Ch. 613, L. 1989.

Compiler's Comments

1989 Amendment: In two places changed "division" to "department"; deleted former (3), (4), and (5) relating to staffing levels, funding, and operation plan (see 1987 MCA for former text); and made minor change in phraseology. Amendment effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

"Division" defined, 39-71-116.

39-71-204. Rescission, alteration, or amendment by department of its orders, decisions, or awards — effect — appeal. (1) The department has continuing jurisdiction over all its orders, decisions, and awards and may, at any time, upon notice, and after opportunity to be heard is given to the parties in interest, rescind, alter, or amend any such order, decision, or award made by it upon good cause appearing therefor.

(2) Any order, decision, or award rescinding, altering, or amending a prior order, decision, or award has the same effect as original orders or awards.

(3) If a party is aggrieved by a department order, the party may appeal the dispute to the workers' compensation judge.

History: En. Sec. 20, Ch. 96, L. 1915; re-en. Sec. 2952, R.C.M. 1921; amd. Sec. 9, Ch. 177, L. 1929; re-en. Sec. 2952, R.C.M. 1935; amd. Sec. 1, Ch. 67, L. 1937; amd. Sec. 40, Ch. 23, L. 1975; R.C.M. 1947, 92-826; amd. Sec. 1, Ch. 63, L. 1979; amd. Sec. 6, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Division" defined, 39-71-116.
"Insurer" defined, 39-71-116.
"Order" defined, 39-71-116.

39-71-205. Department authorized to charge certain fees — disposition of. (1) The department shall have power and authority to charge and collect a fee for copies of papers and records, including certified copies of documents and orders filed in its office, sufficient to recover the cost of the material and the time expended, as fixed by the department.

(2) The department shall have power and authority to fix and collect reasonable charges for publications issued under its authority.

(3) The fees charged and collected under this section shall be paid monthly into the treasury of the state to the credit of the state special revenue fund and shall be accompanied by detailed statement thereof.

History: En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2834, R.C.M. 1921; re-en. Sec. 2834, R.C.M. 1935; amd. Sec. 165, Ch. 147, L. 1963; amd. Sec. 4, Ch. 23, L. 1975; R.C.M. 1947, 92-119; amd. Sec. 2, Ch. 21, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Section 64, Ch. 613, L. 1989, provided that in this section the Code Commissioner is directed to change the term "administrator" or "his" to "department", meaning the Department of Labor and Industry.

Cross-References

"Division" defined, 39-71-116.

39-71-206. Legal advisers of department and state fund. The attorney general is the legal adviser of the department and the state fund and shall represent either entity in all proceedings if requested by the department or state fund. The department and state fund may employ other attorneys or legal advisers as they consider necessary.

History: En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2835, R.C.M. 1921; re-en. Sec. 2835, R.C.M. 1935; amd. Sec. 1, Ch. 162, L. 1937; amd. Sec. 174, Ch. 147, L. 1963; amd. Sec. 5, Ch. 23, L. 1975; R.C.M. 1947, 92-120; amd. Sec. 1, Ch. 283, L. 1983; amd. Sec. 16, Ch. 613, L. 1989.

Compiler's Comments

1989 Amendment: In first sentence substituted references to Department and state fund for reference to Division; substituted second sentence allowing Department and state fund to employ attorneys or legal advisers as they consider necessary for language allowing Division to employ legal assistance for work relating to plan No. 3 cases and pay for it from industrial insurance account; and made minor changes in form and phraseology. Amendment effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

Cross-References

"Division" defined, 39-71-116.

Compensation plan No. 3, Title 39, ch. 71, part 23.

39-71-207. Repealed. Sec. 4, Ch. 239, L. 1989.

History: En. 92-121 by Sec. 1, Ch. 332, L. 1973; R.C.M. 1947, 92-121; amd. Sec. 51, Ch. 613, L. 1989.

39-71-208. Blank forms, minutes, and records. The department shall cause to be printed such blank forms as it considers necessary to facilitate or promote the efficient administration of this chapter. It shall provide a record of all awards made by the department and such other books or records as it considers necessary for the purpose and efficient administration of this chapter. All such records are to be kept in the office of the department.

History: En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2832, R.C.M. 1921; re-en. Sec. 2832, R.C.M. 1935; amd. Sec. 2, Ch. 23, L. 1975; R.C.M. 1947, 92-117; amd. Sec. 1, Ch. 103, L. 1979; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Division" defined, 39-71-116.

39-71-209. Publication of reports and bulletins authorized. The department shall have the power and authority to publish and distribute at its discretion from time to time such further reports and bulletins covering its operations, proceedings, and matters relative to its work as it may deem advisable.

History: En. Sec. 2, Ch. 96, L. 1915; re-en. Sec. 2833, R.C.M. 1921; re-en. Sec. 2833, R.C.M. 1935; amd. Sec. 41, Ch. 93, L. 1969; amd. Sec. 3, Ch. 23, L. 1975; R.C.M. 1947, 92-118; amd. Sec. 12, Ch. 125, L. 1983; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Division" defined, 39-71-116.

39-71-210. Repealed. Sec. 3, Ch. 370, L. 1989.

History: En. Sec. 25, Ch. 96, L. 1915; re-en. Sec. 2968, R.C.M. 1921; re-en. Sec. 2968, R.C.M. 1935; amd. Sec. 50, Ch. 23, L. 1975; R.C.M. 1947, 92-842; amd. Sec. 2, Ch. 103, L. 1979; amd. Sec. 64, Ch. 613, L. 1989.

39-71-211 through 39-71-220 reserved.

39-71-221. Public records of department — right to inspect. Each person has a right to inspect any public record of the department, except as otherwise expressly provided by law. For the purposes of 39-71-221 through 39-71-224, "public record" means any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by a public body regardless of physical form or characteristics.

History: **En. 92-844 by Sec. 1, Ch. 25, L. 1975; R.C.M. 1947, 92-844; amd. Sec. 64, Ch. 613, L. 1989.**

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public participation in governmental operations, Title 2, ch. 3.

"Division" defined, 39-71-116.

39-71-222. Duties of department regarding inspection and examination of records. The department shall furnish proper and reasonable opportunities for inspection and examination of the records under its control and reasonable facilities for making memoranda or abstracts therefrom during the usual business hours to all persons having occasion to examine them. The department may make reasonable rules necessary for the protection of the records and necessary to prevent interference with the regular discharge of its duties.

History: **En. 92-845 by Sec. 2, Ch. 25, L. 1975; R.C.M. 1947, 92-845; amd. Sec. 64, Ch. 613, L. 1989.**

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Section 64, Ch. 613, L. 1989, provided that in this section the Code Commissioner is directed to change the term "administrator" or "his" to "department", meaning the Department of Labor and Industry.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public participation in governmental operations, Title 2, ch. 3.

Adoption and publication of rules, Title 2, ch. 4, part 3.

"Division" defined, 39-71-116.

39-71-223. Certified copies of public records — fees. (1) The department shall, on demand, furnish a certified copy of any public record to a person who has a right to inspect it, if the record is of a nature permitting such copying, or shall furnish reasonable opportunity to inspect or copy.

(2) The department may establish fees reasonably calculated to reimburse the department for its actual cost in making such records available.

History: **En. 92-846 by Sec. 3, Ch. 25, L. 1975; R.C.M. 1947, 92-846; amd. Sec. 64, Ch. 613, L. 1989.**

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Section 64, Ch. 613, L. 1989, provided that in this section the Code Commissioner is directed to change the term "administrator" or "his" to "department", meaning the Department of Labor and Industry.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public participation in governmental operations, Title 2, ch. 3.

Adoption and publication of rules, Title 2, ch. 4, part 3.

"Division" defined, 39-71-116.

39-71-224. Records exempt from disclosure — separation of exempt material from nonexempt. (1) In assuring that the right of individual privacy so essential to the well-being of a free society shall not be infringed without the showing of a compelling state interest, the following public records of the department are exempt from disclosure:

(a) information of a personal nature such as personal, medical, or similar information if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.

(b) any public records or information, the disclosure of which is prohibited by federal law or regulations.

(2) If any public record of the department contains material which is not exempt under subsection (1) of this section, as well as material which is exempt from disclosure, the department shall separate the exempt and nonexempt and make the nonexempt material available for examination.

History: En. 92-847 by Sec. 4, Ch. 25, L. 1975; R.C.M. 1947, 92-847; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Section 64, Ch. 613, L. 1989, provided that in this section the Code Commissioner is directed to change the term "administrator" or "his" to "department", meaning the Department of Labor and Industry.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

"Division" defined, 39-71-116.

Part 3

Miscellaneous Provisions

39-71-301. Certificates and certified copies as evidence. (1) Copies of official documents and orders filed or deposited according to law in the office of the department, certified to by a member of the department or by the secretary under the official seal of the department to be true copies of the original, shall be evidence in like manner as the originals.

(2) In any court proceeding wherein the question as to whether or not an employer or employee has complied with and is operating under or bound by the provisions of the Workers' Compensation Act of the state of Montana is a question for determination, a certificate by a member of the department, or by the secretary under the official seal of the department, certifying that such employer or employee has or has not complied with and is or is not operating under and is or is not bound by the provisions of the Workers' Compensation Act of the state of Montana shall be prima facie evidence thereof.

History: En. Sec. 18, Ch. 96, L. 1915; re-en. Sec. 2944, R.C.M. 1921; amd. Sec. 8, Ch. 177, L. 1929; re-en. Sec. 2944, R.C.M. 1935; amd. Sec. 31, Ch. 23, L. 1975; R.C.M. 1947, 92-818; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' com-

pensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

Requirement of original, Rule 1002, Montana Rules of Evidence (see Title 26, ch. 10).

Public records, Rule 1005, Montana Rules of Evidence (see Title 26, ch. 10).

"Division" defined, 39-71-116.

"Employer" defined, 39-71-117.

"Employee" defined, 39-71-118.

39-71-302. What included in computing payroll. In computing the payroll, all wages, as defined in 39-71-123, received by every worker employed under this chapter are included, whether in the form of salary, wage, piecework, or otherwise and whether payable in money, board, or otherwise.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3009, R.C.M. 1921; re-en. Sec. 3009, R.C.M. 1935; amd. Sec. 11, Ch. 235, L. 1947; amd. Sec. 1, Ch. 146, L. 1971; amd. Sec. 5, Ch. 443, L. 1973; R.C.M. 1947, 92-1121; amd. Sec. 54, Ch. 397, L. 1979; amd. Sec. 8, Ch. 333, L. 1989.

Compiler's Comments

1989 Amendment: Near beginning substituted "all wages, as defined in 39-71-123" for "the entire compensation"; and made minor change in phraseology. Amendment effective July 1, 1989.

Cross-References

"Payroll" defined, 39-71-116.

"Worker" defined, 39-71-118.

39-71-303. Work paid for in property other than money — wages to be determined by department. Where any employer procures any work to be done, payment for which is to be made in property other than money or its equivalent and the value of which property is speculative or intangible, the wages of the employees receiving such compensation shall be determined by the department in accordance with the going wage for the same or similar work in the district or locality where the same is to be performed.

History: En. Sec. 11, Ch. 96, L. 1915; re-en. Sec. 2904, R.C.M. 1921; re-en. Sec. 2904, R.C.M. 1935; amd. Sec. 14, Ch. 23, L. 1975; R.C.M. 1947, 92-607(part); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Division" defined, 39-71-116.

"Wages" defined, 39-71-116.

"Employer" defined, 39-71-117.

39-71-304. Books, records, and payrolls to be open to inspection — penalty for refusal. The books, records, and payrolls of an employer pertinent to the administration of this chapter must always be open to inspection by the department or any duly authorized employee thereof for the purpose of ascertaining the correctness of the payroll, the number of workers employed, and such other information as may be necessary for the department and its management under this chapter. Refusal on the part of an employer to submit the books, records, and payrolls for such inspection shall subject the offending employer to a penalty not exceeding $500 for each offense, to be collected through a civil action in the name of the state and paid into the state treasury.

History: En. Sec. 19, Ch. 96, L. 1915; re-en. Sec. 2946, R.C.M. 1921; re-en. Sec. 2946, R.C.M. 1935; amd. Sec. 166, Ch. 147, L. 1963; amd. Sec. 33, Ch. 23, L. 1975; R.C.M. 1947, 92-820; amd. Sec. 3, Ch. 103, L. 1979; amd. Sec. 55, Ch. 397, L. 1979; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' com-

pensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Division" defined, 39-71-116.
"Payroll" defined, 39-71-116.
"Employer" defined, 39-71-117.
"Employee" defined, 39-71-118.

39-71-305. Repealed. Sec. 16, Ch. 103, L. 1979.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2930, R.C.M. 1921; re-en. Sec. 2930, R.C.M. 1935; amd. Sec. 20, Ch. 23, L. 1975; R.C.M. 1947, 92-804.

39-71-306. Insurers to file summary reports of benefits paid for injuries and statements of medical expenditures. Every insurer shall, on or before the 15th day of each and every month, file with the department:

(1) summary reports of benefits for all payments made during the previous month to injured workers or their beneficiaries or dependents; and

(2) statements showing the amounts expended during the previous month for medical, surgical, and hospital services for injured workers and for the burial of deceased workers.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2932, R.C.M. 1921; re-en. Sec. 2932, R.C.M. 1935; amd. Sec. 21, Ch. 23, L. 1975; R.C.M. 1947, 92-806; amd. Sec. 56, Ch. 397, L. 1979; amd. Sec. 17, Ch. 613, L. 1989.

Compiler's Comments

1989 Amendment: In introductory clause substituted "insurer" for reference to plan No. 1 employers and plan No. 2 insurers and changed "division" to "department"; and in (1) substituted "summary reports of benefits" for "duplicate receipts". Amendment effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

Cross-References

"Division" defined, 39-71-116.
"Insurer" defined, 39-71-116.
"Employer" defined, 39-71-117.
Compensation plan No. 1, Title 39, ch. 71, part 21.
Compensation plan No. 2, Title 39, ch. 71, part 22.

39-71-307. Employers and insurers to file reports of accidents — penalty. (1) Every employer and every insurer is required to file with the department, under department rules, a full and complete report of every accident to an employee arising out of or in the course of his employment and resulting in loss of life or injury to the employee. The reports must be furnished to the department in the form and detail as the department prescribes and must provide specific answers to all questions required by the department under its rules. However, if an employer is unable to answer a question, he shall state the reason he is unable to answer.

(2) Every insurer transacting business under this chapter shall, at the time and in the manner prescribed by the department, make and file with the department the reports of accidents as the department requires.

(3) An employer, insurer, or adjuster who refuses or neglects to submit to the department reports necessary for the proper review of a claim, as provided in subsection (1), may be assessed a penalty of not less than $200 or more than $500 for each offense. The department shall assess and collect the penalty. An insurer may contest a penalty assessment in a hearing conducted according to department rules.

History: (1)En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2934, R.C.M. 1921; re-en. Sec. 2934, R.C.M. 1935; amd. Sec. 22, Ch. 23, L. 1975; Sec. 92-808, R.C.M. 1947; (2)En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2987, R.C.M. 1921; re-en. Sec. 2987, R.C.M. 1935; amd. Sec. 64, Ch. 23,

L. 1975; Sec. 92-1010, R.C.M. 1947; R.C.M. 1947, 92-808, 92-1010; amd. Sec. 14, Ch. 333, L. 1989; amd. Secs. 18, 64, Ch. 613, L. 1989.

Compiler's Comments

1989 Amendments: Chapter 333 inserted (3) allowing assessment by Division (now Department) of penalty against employer, insurer, or adjuster for not filing reports of accidents and allowing insurer to contest assessment. Amendment effective July 1, 1989.

Chapter 613 throughout section changed "division" to "department"; and made minor changes in phraseology. Amendment effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

"Division" defined, 39-71-116.

"Insurer" defined, 39-71-116.

"Employer" defined, 39-71-117.

"Employee" defined, 39-71-118.

"Injury" defined, 39-71-119.

39-71-308. Neglect or refusal of public corporation to file payroll reports — arbitrary assessment by department. If a public corporation insured by the state fund neglects or refuses to file prescribed payroll reports of its employees, the department may levy an arbitrary assessment upon the public corporation in an amount of $75 for each assessment. The assessment must be collected in the manner provided in this chapter for the collection of assessments.

History: En. Sec. 3, Ch. 96, L. 1915; amd. Sec. 1, Ch. 100, L. 1919; amd. Sec. 1, Ch. 196, L. 1921; re-en. Sec. 2840, R.C.M. 1921; re-en. Sec. 2840, R.C.M. 1935; amd. Sec. 1, Ch. 410, L. 1971; amd. Sec. 6, Ch. 23, L. 1975; R.C.M. 1947, 92-206(part); amd. Sec. 3, Ch. 21, L. 1981; amd. Sec. 19, Ch. 613, L. 1989.

Compiler's Comments

1989 Amendment: Changed "state compensation insurance fund" to "state fund" and "division" to "department"; and made minor changes in phraseology. Amendment effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

Cross-References

"Division" defined, 39-71-116.

"Payroll" defined, 39-71-116.

"Public corporation" defined, 39-71-116.

39-71-309. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. 92-706.1 by Sec. 1, Ch. 252, L. 1973; amd. Sec. 1, Ch. 43, L. 1975; amd. Sec. 1, Ch. 189, L. 1975; R.C.M. 1947, 92-706.1(2); amd. Sec. 57, Ch. 397, L. 1979.

39-71-310 through 39-71-315 reserved.

39-71-316. Filing true claim — obtaining benefits through deception or other fraudulent means. (1) A person filing a claim under this chapter or chapter 72 of this title, by signing the claim, affirms the information filed is true and correct to the best of that person's knowledge.

(2) A person who obtains or assists in obtaining benefits to which the person is not entitled under this chapter or chapter 72 of this title may be guilty of theft under 45-6-301. A county attorney may initiate criminal proceedings against the person.

History: En. Sec. 7, Ch. 464, L. 1987.

39-71-317. Employer not to terminate worker for filing claim — preference — jurisdiction over dispute. (1) An employer may not use as grounds for terminating a worker the filing of a claim under this chapter or chapter 72 of this title.

(2) When an injured worker is capable of returning to work within 2 years from the date of injury and has received a medical release to return to work,

the worker must be given a preference over other applicants for a comparable position that becomes vacant if the position is consistent with the worker's physical condition and vocational abilities.

(3) This preference applies only to employment with the employer for whom the employee was working at the time the injury occurred.

(4) The department and workers' compensation court do not have jurisdiction to administer or resolve a dispute under this section. Exclusive jurisdiction is with the district court.

History: En. Sec. 20, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Part 4

Coverage, Liability, and Subrogation

39-71-401. Employments covered and employments exempted. (1) Except as provided in subsection (2) of this section, the Workers' Compensation Act applies to all employers as defined in 39-71-117 and to all employees as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Every employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows such an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116;

(c) employment of a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code;

(d) employment of sole proprietors or working members of a partnership, except as provided in subsection (3);

(e) employment of a broker or salesman performing under a license issued by the board of realty regulation;

(f) employment of a direct seller engaged in the sale of consumer products, primarily in the customer's home;

(g) employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States;

(h) employment of any person performing services in return for aid or sustenance only, except employment of a volunteer under 67-2-105;

(i) employment with any railroad engaged in interstate commerce, except that railroad construction work is included in and subject to the provisions of this chapter;

(j) employment as an official, including a timer, referee, or judge, at a school amateur athletic event, unless the person is otherwise employed by a school district;

(k) any person performing services as a newspaper carrier or free-lance correspondent if the person performing the services or a parent or guardian of the person performing the services in the case of a minor has acknowledged in writing that the person performing the services and the services are not covered. As used in this subsection "free-lance correspondent" is a person who submits articles or photographs for publication and is paid by the article or by the photograph. As used in this subsection "newspaper carrier":

(i) is a person who provides a newspaper with the service of delivering newspapers singly or in bundles; but

(ii) does not include an employee of the paper who, incidentally to his main duties, carries or delivers papers.

(3) (a) A sole proprietor or a working member of a partnership who holds himself out or considers himself an independent contractor [and who is not contracting] for cosmetologist's services or barber's services as defined in 39-51-204(1)(l) must elect to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3, but he may apply to the department for an exemption from the Workers' Compensation Act for himself.

(b) The application must be made in accordance with the rules adopted by the department. The department may deny the application only if it determines that the applicant is not an independent contractor.

(c) When an application is approved by the department, it is conclusive as to the status of an independent contractor and precludes the applicant from obtaining benefits under this chapter.

(d) When an election of an exemption is approved by the department, the election remains effective and the independent contractor retains his status as an independent contractor until he notifies the department of any change in his status and provides a description of his present work status.

(e) If the department denies the application for exemption, the applicant may contest the denial by petitioning for review of the decision by an appeals referee in the manner provided for in 39-51-1109. An applicant dissatisfied with the decision of the appeals referee may appeal the decision in accordance with the procedure established in 39-51-2403 and 39-51-2404.

(4) (a) A private corporation shall provide coverage for its officers and other employees under the provisions of compensation plan No. 1, 2, or 3. However, pursuant to such rules as the department promulgates and subject in all cases to approval by the department, an officer of a private corporation may elect not to be bound as an employee under this chapter by giving a written notice, on a form provided by the department, served in the following manner:

(i) if the employer has elected to be bound by the provisions of compensation plan No. 1, by delivering the notice to the board of directors of the employer and the department; or

(ii) if the employer has elected to be bound by the provisions of compensation plan No. 2 or 3, by delivering the notice to the board of directors of the employer, the department, and the insurer.

(b) If the employer changes plans or insurers, the officer's previous election is not effective and the officer shall again serve notice as provided if he elects not to be bound.

(c) The appointment or election of an employee as an officer of a corporation for the purpose of excluding the employee from coverage under this chapter does not entitle the officer to elect not to be bound as an employee under this chapter. In any case, the officer must sign the notice required by subsection (4)(a) under oath or affirmation, and he is subject to the penalties for false swearing under 45-7-202 if he falsifies the notice.

(5) Each employer shall post a sign in the workplace at the locations where notices to employees are normally posted, informing employees about the employer's current provision of compensation insurance. A workplace is any location where an employee performs any work-related act in the course of employment, regardless of whether the location is temporary or permanent, and includes the place of business or property of a third person while the employer has access to or control over such place of business or property for the purpose of carrying on his usual trade, business, or occupation. The sign will be provided by the department, distributed through insurers or directly by the department, and posted by employers in accordance with rules adopted by the department. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a $50 fine for each citation.

History: (1), (2)(a) thru (f)En. 92-202.1 by Sec. 1, Ch. 492, L. 1973; amd. Sec. 1, Ch. 550, L. 1977; Sec. 92-202.1, R.C.M. 1947; (2)(g)En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2931, R.C.M. 1921; re-en. Sec. 2931, R.C.M. 1935; Sec. 92-805, R.C.M. 1947; R.C.M. 1947, 92-202.1, 92-805; amd. Sec. 58, Ch. 397, L. 1979; amd. Sec. 1, Ch. 470, L. 1983; amd. Sec. 1, Ch. 94, L. 1985; amd. Sec. 1, Ch. 100, L. 1985; amd. Sec. 3, Ch. 336, L. 1985; amd. Sec. 1, Ch. 148, L. 1987; amd. Sec. 1, Ch. 290, L. 1987; amd. Sec. 6, Ch. 314, L. 1987; amd. Sec. 10, Ch. 464, L. 1987; amd. Sec. 2, Ch. 526, L. 1987; amd. Sec. 1, Ch. 33, L. 1989; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

1989 Amendment: Chapter 33 in (2)(c) substituted "a dependent member of an employer's family for whom an exemption may be claimed by the employer under the federal Internal Revenue Code" for "members of an employer's family dwelling in the employer's household". Amendment effective July 1, 1989.

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

Regulation of real estate brokers and salesmen, Title 37, ch. 51.

"Casual employment" defined, 39-71-116.

"Insurer" defined, 39-71-116.

"Employer" defined, 39-71-117.

"Employee" defined, 39-71-118.

"Injury" or "injured" defined, 39-71-119.

Compensation plan No. 1, Title 39, ch. 71, part 21.

Compensation plan No. 2, Title 39, ch. 71, part 22.

Compensation plan No. 3, Title 39, ch. 71, part 23.

39-71-402. Extraterritorial application and reciprocity. (1) If a worker employed in this state who is subject to the provisions of this chapter temporarily leaves the state incidental to that employment and receives an injury arising out of and in the course of such employment, the provisions of this chapter shall apply to such worker as though he were injured within this state.

(2) If a worker from another state and his employer from another state are temporarily engaged in work within this state, this chapter shall not apply to them:

(a) if the employer and employee are bound by the provisions of the workers' compensation law or similar law of such other state which applies to them while they are in the state of Montana; and

(b) if the Workers' Compensation Act of this state is recognized and given effect as the exclusive remedy for workers employed in this state who are injured while temporarily employed in such other state.

(3) A certificate from an authorized officer of the workers' compensation department or similar agency of another state certifying that an employer of such other state is bound by the Workers' Compensation Act of the state and that its act will be applied to employees of the employer while in the state of Montana shall be prima facie evidence of the application of the workers' compensation law of the certifying state.

(4) The department may, with the approval of the governor, enter into agreements with workers' compensation agencies of other states for the purpose of promulgating regulations not inconsistent with the provisions of this chapter to carry out the extraterritorial application of the workers' compensation laws of the agreeing states.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2911, R.C.M. 1921; re-en. Sec. 2911, R.C.M. 1935; amd. Sec. 1, Ch. 70, L. 1967; amd. Sec. 17, Ch. 23, L. 1975; amd. Sec. 8, Ch. 550, L. 1977; R.C.M. 1947, 92-614(2) thru (5); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

Governor — sole official organ of communication, 2-15-201.

"Division" defined, 39-71-116.

"Employer" defined, 39-71-117.

"Employee" defined, 39-71-118.

"Worker" defined, 39-71-118.

"Injury" or "injured" defined, 39-71-119.

39-71-403. Plan three exclusive for state agencies — election of plan by other public corporations — financing of self-insurance fund. (1) If a state agency is the employer, the terms, conditions, and provisions of compensation plan No. 3, state fund, are exclusive, compulsory, and obligatory upon both employer and employee. Any sums necessary to be paid under the provisions of this chapter by any state agency are considered to be ordinary and necessary expense of the agency. The agency shall make appropriation of and pay the sums into the state fund at the time and in the manner provided for in this chapter, notwithstanding that the state agency may have failed to anticipate the ordinary and necessary expense in any budget, estimate of expenses, appropriations, ordinances, or otherwise.

(2) A public corporation, other than a state agency, may elect coverage under compensation plan No. 1, plan No. 2, or plan No. 3, separately or jointly with any other public corporation other than a state agency. A public corporation electing compensation plan No. 1 may purchase reinsurance or issue bonds or notes pursuant to subsection (3)(b). A public corporation electing compensation plan No. 1 is subject to the same provisions as a private employer electing compensation plan No. 1.

(3) (a) A public corporation, other than a state agency, that elects plan No. 1 may establish a fund sufficient to pay the compensation and benefits provided for in this chapter and chapter 72 and to discharge all liabilities that

reasonably incur during the fiscal year for which the election is effective. Proceeds from the fund must be used only to pay claims covered by this chapter and chapter 72 and for actual and necessary expenses required for the efficient administration of the fund, including debt service on any bonds and notes issued pursuant to subsection (3)(b).

(b) (i) A public corporation, other than a state agency, separately or jointly with another public corporation, other than a state agency, may issue and sell its bonds and notes for the purpose of establishing, in whole or in part, the self-insurance workers' compensation fund provided for in subsection (3)(a) and to pay the costs associated with the sale and issuance of the bonds. Bonds and notes may be issued in an amount not exceeding 3% of the taxable valuation of the public corporation as of the date of issue. The bonds and notes must be authorized by resolution of the governing body of the public corporation and are payable from an annual property tax levied in the amount necessary to pay principal and interest on the bonds or notes. This authority to levy an annual property tax exists despite any provision of law or maximum levy limitation to the contrary. The revenues derived from the sale of the bonds and notes may not be used for any other purpose.

(ii) The bonds and notes:

(A) may be sold at public or private sale;

(B) do not constitute debt within the meaning of any statutory debt limitation; and

(C) may contain other terms and provisions as the governing body determines.

(iii) Two or more public corporations, other than state agencies, may agree to exercise their respective borrowing powers jointly under this subsection (3)(b) or may authorize a joint board to exercise the powers on their behalf.

(iv) The fund established from the proceeds of bonds and notes issued and sold under this subsection (3)(b) may, if sufficient, be used in lieu of a surety bond, reinsurance, specific and aggregate excess insurance, or any other form of additional security necessary to demonstrate the public corporation's ability to discharge all liabilities as provided in subsection (3)(a). Subject to the 3% of taxable valuation limitation in (3)(b)(i), a public corporation may issue bonds and notes to establish a fund sufficient to discharge liabilities for periods greater than 1 year.

(4) All money in the fund established under subsection (3)(a) not needed to meet immediate expenditures must be invested by the governing body of the public corporation or the joint board created by two or more public corporations as provided in subsection (3)(b)(iii), and all proceeds of the investment must be credited to the fund.

History: En. Sec. 3, Ch. 96, L. 1915; amd. Sec. 1, Ch. 100, L. 1919; amd. Sec. 1, Ch. 196, L. 1921; re-en. Sec. 2840, R.C.M. 1921; re-en. Sec. 2840, R.C.M. 1935; amd. Sec. 1, Ch. 410, L. 1971; amd. Sec. 6, Ch. 23, L. 1975; R.C.M. 1947, 92-206(part); amd. Sec. 1, Ch. 155, L. 1979; (2) thru (4)En. Sec. 2, Ch. 155, L. 1979; amd. Sec. 4, Ch. 21, L. 1981; amd. Sec. 97, Ch. 370, L. 1987; amd. Sec. 20, Ch. 613, L. 1989; amd. Sec. 1, Ch. 665, L. 1989.

Compiler's Comments

1989 Amendments: Chapter 613 in (1), in first sentence, inserted reference to "state fund" and in third sentence substituted "state fund" for "state compensation insurance fund"; in (2), in first sentence, substituted "state fund" for "state insurance fund"; and made minor changes in phraseology. Amendment effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

Chapter 665 in first sentence of (2), after "plan No. 1", deleted "employer", after "plan No. 2" deleted "insurer", and after "plan No. 3" deleted "state insurance fund"; at end of second sentence of (2) inserted "or issue bonds or notes pursuant to subsection (3)(b)"; at end of (3)(a) inserted "including debt service on any bonds and notes issued pursuant to subsection (3)(b)"; inserted (3)(b) relating to the sale of bonds and notes to establish a self-insurance workers' compensation fund; in (4) substituted reference to subsection (3)(a) for reference to subsection (3) and in middle inserted "or the joint board created by two or more public corporations as provided in subsection (3)(b)(iii)"; and made minor changes in phraseology. Amendment effective May 12, 1989.

Cross-References

"Insurer" defined, 39-71-116.

"Public corporation" defined, 39-71-116.

"Employer" defined, 39-71-117.

"Employee" defined, 39-71-118.

Compensation plan No. 1, Title 39, ch. 71, part 21.

Compensation plan No. 2, Title 39, ch. 71, part 22.

Compensation plan No. 3, Title 39, ch. 71, part 23.

39-71-404. Repealed. Sec. 16, Ch. 103, L. 1979.

History: En. Sec. 3, Ch. 96, L. 1915; amd. Sec. 1, Ch. 100, L. 1919; amd. Sec. 1, Ch. 196, L. 1921; re-en. Sec. 2840, R.C.M. 1921; re-en. Sec. 2840, R.C.M. 1935; amd. Sec. 1, Ch. 410, L. 1971; amd. Sec. 6, Ch. 23, L. 1975; R.C.M. 1947, 92-206(part).

39-71-405. Liability of employer who contracts work out. (1) An employer who contracts with an independent contractor to have work performed of a kind which is a regular or a recurrent part of the work of the trade, business, occupation, or profession of such employer is liable for the payment of benefits under this chapter to the employees of the contractor if the contractor has not properly complied with the coverage requirements of the Worker's Compensation Act. Any insurer who becomes liable for payment of benefits may recover the amount of benefits paid and to be paid and necessary expenses from the contractor primarily liable therein.

(2) Where an employer contracts to have any work to be done by a contractor other than an independent contractor, and the work so contracted to be done is a part or process in the trade or business of the employer, then the employer is liable to pay all benefits under this chapter to the same extent as if the work were done without the intervention of the contractor, and the work so contracted to be done shall not be construed to be casual employment. Where an employer contracts work to be done as specified in this subsection, the contractor and the contractor's employees shall come under that plan of compensation adopted by the employer.

(3) Where an employer contracts any work to be done, wholly or in part for the employer, by an independent contractor, where the work so contracted to be done is casual employment as to such employer, then the contractor shall become the employer for the purposes of this chapter.

History: (1)En. 92-410.1 by Sec. 1, Ch. 154, L. 1973; Sec. 92-410.1, R.C.M. 1947; (2), (3)En. Sec. 11, Ch. 96, L. 1915; re-en. Secs. 2901, 2902, 2903, R.C.M. 1921; re-en. Secs. 2901, 2902, 2903, R.C.M. 1935; Secs. 92-604, 92-605, 92-606, R.C.M. 1947; R.C.M. 1947, 92-410.1(part), 92-604, 92-605, 92-606; amd. Sec. 4, Ch. 103, L. 1979.

Cross-References

"Casual employment" defined, 39-71-116.

"Insurer" defined, 39-71-116.

"Employer" defined, 39-71-117.

"Independent contractor" defined, 39-71-120.

39-71-406. Deduction from wages of any part of premium a misdemeanor. It is unlawful for the employer to deduct or obtain any part of any premium required to be paid by this chapter from the wages or earnings of his workers, and the making or attempt to make any such deduction is a misdemeanor.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2937, R.C.M. 1921; re-en. Sec. 2937, R.C.M. 1935; R.C.M. 1947, 92-811; amd. Sec. 59, Ch. 397, L. 1979; amd. Sec. 6, Ch. 101, L. 1985.

Cross-References
"Wages" defined, 39-71-116.
"Employer" defined, 39-71-117.
Penalty for misdemeanor, 46-18-212.

39-71-407. Liability of insurers — limitations. (1) Every insurer is liable for the payment of compensation, in the manner and to the extent hereinafter provided, to an employee of an employer it insures who receives an injury arising out of and in the course of his employment or, in the case of his death from such injury, to his beneficiaries, if any.

(2) (a) An insurer is liable for an injury as defined in 39-71-119 if the claimant establishes it is more probable than not that:

(i) a claimed injury has occurred; or

(ii) a claimed injury aggravated a preexisting condition.

(b) Proof that it was medically possible that a claimed injury occurred or that such claimed injury aggravated a preexisting condition is not sufficient to establish liability.

(3) An employee who suffers an injury or dies while traveling is not covered by this chapter unless:

(a) (i) the employer furnishes the transportation or the employee receives reimbursement from the employer for costs of travel, gas, oil, or lodging as a part of the employee's benefits or employment agreement; and

(ii) the travel is necessitated by and on behalf of the employer as an integral part or condition of the employment; or

(b) the travel is required by the employer as part of the employee's job duties.

(4) An employee is not eligible for benefits otherwise payable under this chapter if the employee's use of alcohol or drugs not prescribed by a physician is the sole and exclusive cause of the injury or death. However, if the employer had knowledge of and failed to attempt to stop the employee's use of alcohol or drugs, this subsection does not apply.

(5) If a claimant who has reached maximum healing suffers a subsequent nonwork-related injury to the same part of the body, the workers' compensation insurer is not liable for any compensation or medical benefits caused by the subsequent nonwork-related injury.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2911, R.C.M. 1921; re-en. Sec. 2911, R.C.M. 1935; amd. Sec. 1, Ch. 70, L. 1967; amd. Sec. 17, Ch. 23, L. 1975; amd. Sec. 8, Ch. 550, L. 1977; R.C.M. 1947, 92-614(1); amd. Sec. 11, Ch. 464, L. 1987; amd. Sec. 1, Ch. 184, L. 1989.

Compiler's Comments
1989 Amendment: Inserted (5) relating to a nonwork-related injury.

Cross-References
"Insurer" defined, 39-71-116.
"Employer" defined, 39-71-117.
"Employee" defined, 39-71-118.
"Injured" or "injury" defined, 39-71-119.

39-71-408. Liability as first lien in case of bankruptcy or failure. In case of bankruptcy, insolvency, liquidation, or the failure of an employer or insurer to meet any obligations imposed by this chapter, every liability which may be due under this chapter shall constitute a first lien upon any deposit made by such employer or insurer, and if such deposit shall not be sufficient to secure the payment of such liability in the manner and at the times provided for in this chapter, the deficiency shall be a lien upon all the property of such employer or insurer within this state and shall be prorated with other lienable claims and shall have preference over the claim of any creditor or creditors of such employer or insurer except the claims of other lienors.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2928, R.C.M. 1921; re-en. Sec. 2928, R.C.M. 1935; R.C.M. 1947, 92-802.

Cross-References

"Insurer" defined, 39-71-116.

"Employer" defined, 39-71-117.

Liens generally, Title 71, ch. 3, part 1.

39-71-409. Waivers by employee invalid. No agreement by an employee to waive any rights under this chapter for any injury to be received shall be valid.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2929, R.C.M. 1921; re-en. Sec. 2929, R.C.M. 1935; R.C.M. 1947, 92-803.

Cross-References

"Employee" defined, 39-71-118.

"Injury" or "injured" defined, 39-71-119.

39-71-410. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. Sec. 3, Ch. 96, L. 1915; re-en. Sec. 2842, R.C.M. 1921; re-en. Sec. 2842, R.C.M. 1935; amd. Sec. 1, Ch. 95, L. 1963; amd. Sec. 1, Ch. 145, L. 1971; amd. Sec. 1, Ch. 95, L. 1974; R.C.M. 1947, 92-208; amd. Sec. 60, Ch. 197, L. 1979.

39-71-411. Provisions of chapter exclusive remedy — nonliability of insured employer. For all employments covered under the Workers' Compensation Act or for which an election has been made for coverage under this chapter, the provisions of this chapter are exclusive. Except as provided in part 5 of this chapter for uninsured employers and except as otherwise provided in the Workers' Compensation Act, an employer is not subject to any liability whatever for the death of or personal injury to an employee covered by the Workers' Compensation Act or for any claims for contribution or indemnity asserted by a third person from whom damages are sought on account of such injuries or death. The Workers' Compensation Act binds the employee himself, and in case of death binds his personal representative and all persons having any right or claim to compensation for his injury or death, as well as the employer and the servants and employees of such employer and those conducting his business during liquidation, bankruptcy, or insolvency.

History: En. 92-204.1 by Sec. 1, Ch. 493, L. 1973; amd. Sec. 2, Ch. 550, L. 1977; R.C.M. 1947, 92-204.1(part); amd. Sec. 1, Ch. 329, L. 1979; amd. Sec. 61, Ch. 397, L. 1979.

Cross-References

Liability of railroad or mining company to employee injured by coemployee, 39-2-703, 39-2-704.

"Employer" defined, 39-71-117.

"Employee" defined, 39-71-118.

"Injury" defined, 39-71-119.

39-71-412. Liability of third party other than employer or fellow employee — additional cause of action. The right to compensation and medical benefits as provided by this chapter is not affected by the fact that the injury, occupational disease, or death is caused by the negligence of a third party other than the employer or the servants or employees of the employer. Whenever such event occurs to an employee while performing the duties of his employment and such event is caused by the act or omission of some persons or corporations other than his employer or the servants or employees of his employer, the employee or in case of his death his heirs or personal representative shall, in addition to the right to receive compensation under this chapter, have a right to prosecute any cause of action he may have for damages against such persons or corporations.

History: En. 92-204.1 by Sec. 1, Ch. 493, L. 1973; amd. Sec. 2, Ch. 550, L. 1977; R.C.M. 1947, 92-204.1(part).

Cross-References

"Employer" defined, 39-71-117.

"Employee" defined, 39-71-118.

"Injury" defined, 39-71-119.

39-71-413. Liability of fellow employee for intentional and malicious acts or omissions — additional cause of action. If an employee receives an injury while performing the duties of his employment and the injury or injuries so received by the employee are caused by the intentional and malicious act or omission of a servant or employee of his employer, then the employee or in case of his death his heirs or personal representatives shall, in addition to the right to receive compensation under the Workers' Compensation Act, have a right to prosecute any cause of action he may have for damages against the servants or employees of his employer causing the injury.

History: En. 92-204.1 by Sec. 1, Ch. 493, L. 1973; amd. Sec. 2, Ch. 550, L. 1977; R.C.M. 1947, 92-204.1(part).

Cross-References

Liability of railroad or mining company to employee injured by coemployee, 39-2-703, 39-2-704.

"Employer" defined, 39-71-117.

"Employee" defined, 39-71-118.

"Injury" defined, 39-71-119.

39-71-414. Subrogation. (1) If an action is prosecuted as provided for in 39-71-412 or 39-71-413 and except as otherwise provided in this section, the insurer is entitled to subrogation for all compensation and benefits paid or to be paid under the Workers' Compensation Act. The insurer's right of subrogation is a first lien on the claim, judgment, or recovery.

(2) (a) If the injured employee intends to institute the third party action, he shall give the insurer reasonable notice of his intention to institute the action.

(b) The injured employee may request that the insurer pay a proportionate share of the reasonable cost of the action, including attorneys' fees.

(c) The insurer may elect not to participate in the cost of the action. If this election is made, the insurer waives 50% of its subrogation rights granted by this section.

(d) If the injured employee or the employee's personal representative institutes the action, the employee is entitled to at least one-third of the amount recovered by judgment or settlement less a proportionate share of reasonable costs, including attorneys' fees, if the amount of recovery is insufficient to provide the employee with that amount after payment of subrogation.

(3) If an injured employee refuses or fails to institute the third party action within 1 year from the date of injury, the insurer may institute the action in the name of the employee and for the employee's benefit or that of the employee's personal representative. If the insurer institutes the action, it shall pay to the employee any amount received by judgment or settlement which is in excess of the amounts paid or to be paid under the Workers'

Compensation Act after the insurer's reasonable costs, including attorneys' fees for prosecuting the action, have been deducted from the recovery.

(4) An insurer may enter into compromise agreements in settlement of subrogation rights.

(5) If the amount of compensation and other benefits payable under the Workers' Compensation Act have not been fully determined at the time the employee, the employee's heirs or personal representatives, or the insurer have settled in any manner the action as provided for in this section, the department shall determine what proportion of the settlement shall be allocated under subrogation. The department's determination may be appealed to the workers' compensation judge.

(6) (a) The insurer is entitled to full subrogation rights under this section, even though the claimant is able to demonstrate damages in excess of the workers' compensation benefits and the third-party recovery combined. The insurer may subrogate against the entire settlement or award of a third party claim brought by the claimant or his personal representative, without regard to the nature of the damages.

(b) If no survival action exists and the parties reach a settlement of a wrongful death claim without apportionment of damages by a court or jury, the insurer may subrogate against the entire settlement amount, without regard to the parties' apportionment of the damages, unless the insurer is a party to the settlement agreement.

History: En. 92-204.2 by Sec. 3, Ch. 550, L. 1977; R.C.M. 1947, 92-204.2; amd. Sec. 12, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Division" defined, 39-71-116.
"Insurer" defined, 39-71-116.
"Year" defined, 39-71-116.
"Employee" defined, 39-71-118.
"Injury" or "injured" defined, 39-71-119.

39-71-415. Procedure for resolving disputes regarding independent contractor status. (1) If an individual, employer, or insurer has a dispute as to whether an individual is an independent contractor or an employee as defined in this chapter, any party may petition a department of labor and industry appeals referee for resolution of the dispute in accordance with 39-51-1109 and may appeal from a decision of the appeals referee in the same manner as prescribed in 39-51-2403 and 39-51-2404.

(2) If a claimant and insurer have a dispute over benefits and the dispute involves an issue of whether the claimant is an independent contractor or employee as defined in this chapter, either party may petition the workers' compensation judge for resolution of the dispute in accordance with 39-71-2905.

(3) Notwithstanding the provisions of subsection (1), an individual may apply to the department for an exemption from the Workers' Compensation Act in accordance with 39-71-401.

History: En. Sec. 7, Ch. 314, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' com-

pensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

39-71-416 through 39-71-420 reserved.

39-71-421. Financial incentives to institute safety programs. Insurers may provide financial incentives to an employer who implements a formal safety program. An insurer may provide to an employer a premium discount that reflects the degree of risk diminished by the implemented safety program.

History: En. Sec. 9, Ch. 464, L. 1987; amd. Sec. 21, Ch. 613, L. 1989.

Compiler's Comments

1989 Amendment: Substituted "insurers" and "insurer" for references to plan No. 2, plan No. 3, and insurance carrier. Amendment effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

39-71-422 through 39-71-425 reserved.

39-71-426. Reciprocal agreements with Canadian provinces. Subject to the conditions provided in 39-71-427, the governor may enter into agreements with duly authorized representatives of any Canadian province, granting reciprocal application of the workers' compensation laws of this state to Montana employers and workers if they are temporarily engaged in work in that province.

History: En. Sec. 1, Ch. 388, L. 1989.

Compiler's Comments

Effective Date: Section 6, Ch. 388, L. 1989, provided: "[This act] is effective on passage and approval." Approved March 30, 1989.

39-71-427. Conditions for reciprocal agreements. An agreement entered into under 39-71-426 must contain provisions that extend to Montana employers and workers the same privileges, benefits, and exemptions from payment of taxes and premiums for workers' compensation coverage as provided under the laws of this state. The agreement must, in the judgment of the governor, be fair and equitable and in the best interests of the citizens of this state.

History: En. Sec. 2, Ch. 388, L. 1989.

Compiler's Comments

Effective Date: Section 6, Ch. 388, L. 1989, provided: "[This act] is effective on passage and approval." Approved March 30, 1989.

39-71-428. Denial of reciprocity. Beginning September 30, 1989, the workers' compensation laws of this state apply to any employer or worker of a Canadian province temporarily engaged in work within this state if the province has not entered into an agreement as provided for in 39-71-426.

History: En. Sec. 3, Ch. 388, L. 1989.

Compiler's Comments

Effective Date: Section 6, Ch. 388, L. 1989, provided: "[This act] is effective on passage and approval." Approved March 30, 1989.

39-71-429 and 39-71-430 reserved.

39-71-431. Assigned risk plan. (1) Following the date on which the provisions of 39-71-2311 through 39-71-2320, 39-71-2337, and 39-71-2338 are implemented but no later than December 31, 1990, the commissioner of the department of labor and industry may order the establishment of and administer a plan to equitably apportion among the state fund, plan No. 3, and private insurers, plan No. 2, the coverage required by this chapter for employers who are unable to procure coverage through ordinary methods. In determining whether to order an assigned risk plan to be established, the commissioner shall consider the effect a plan would have on the availability of workers' compensation insurance and the need to provide competitive workers' compensation premium rates for employers in this state. If the commissioner orders the establishment of an assigned risk plan, it may not take effect until at least 6 months following the commissioner's order creating the plan.

(2) All plan No. 2 insurers and the state fund shall subscribe to and participate in the assigned risk plan.

(3) If an insurer refuses to accept its equitable apportionment under the assigned risk plan, the commissioner of insurance may suspend or revoke the insurer's authority to issue workers' compensation insurance policies in this state.

(4) If an assigned risk plan is established and in effect, the state fund, plan No. 3, is not required to insure any employer in this state requesting coverage, and it may refuse coverage for an employer, except for a state agency.

(5) If an assigned risk plan is established and in effect, an employer who is refused the coverage required by this chapter by the state fund, plan No. 3, and by at least two private insurers, plan No. 2, may be assigned coverage by the commissioner under the assigned risk plan pursuant to the procedure established by the commissioner for the equitable apportionment of coverage.

History: En. Sec. 12, Ch. 613, L. 1989.

Compiler's Comments

Effective Date: Section 65, Ch. 613, L. 1989, provided that this section is effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

Cross-References

Health insurance guaranty associations, Title 33, ch. 10, part 2.

39-71-432 and 39-71-433 reserved.

39-71-434. Deductible option for medical benefits. (1) In order to lower the amount an employer is required to pay to obtain workers' compensation insurance coverage under this chapter, a workers' compensation policy issued by the state compensation insurance fund under plan No. 3 or by a private insurer under plan No. 2 may offer a deductible for the medical, hospital, and related services allowed under 39-71-704. The medical deductible must be offered in amounts of $500 increments, up to a total of $2,500 per claim.

(2) If the insured employer chooses to offer a medical deductible, the insured employer is liable for the amount of the deductible for the medical benefits paid for each otherwise compensable claim of work injury suffered by an employee.

(3) The insured employer shall contract with the insurer to have the insurer pay the entire cost of the covered medical benefits directly to the provider of medical or related services and then seek reimbursement from the insured employer for the deductible amount. The insurer is entitled to reimbursement only for medical, hospital, and related services allowed under 39-71-704, up to the amount of the deductible.

(4) If an insured employer who has contracted with an insurer for a medical deductible does not pay the medical deductible amount to the insurer through reimbursement, the amount paid by the insurer on the claim may be included as benefits paid in a determination of the insured employer's rate.

History: En. Sec. 1, Ch. 641, L. 1989.

Compiler's Comments

Applicability: Section 5, Ch. 641, L. 1989, provided: "[This act] applies to workers' compensation policies issued after September 30, 1989, unless an employer and insurer agree to renegotiate a workers' compensation policy in effect on [the effective date of this act] to include a term allowing for a medical deductible." Effective October 1, 1989.

Part 5

Uninsured Employers

39-71-501. Definition of uninsured employer. For the purposes of this part, "uninsured employer" means an employer who has not properly complied with the provisions of 39-71-401.

History: En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(part); amd. Sec. 62, Ch. 397, L. 1979.

39-71-502. Creation and purpose of uninsured employers' fund. There is created an uninsured employers' fund. The purpose of the fund is to pay to an injured employee of an uninsured employer the same benefits the employee would have received if the employer had been properly enrolled under compensation plan No. 1, 2, or 3, except as provided in 39-71-503(2).

History: En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(part); amd. Sec. 13, Ch. 464, L. 1987.

Cross-References

"Uninsured employer" defined, 39-71-501.

Limitations on benefit entitlement under fund, 39-71-510.

Compensation and benefits generally, Title 39, ch. 71, part 7.

39-71-503. Administration of fund. (1) The department shall administer the fund and shall pay all proper benefits to injured employees of uninsured employers.

(2) Surpluses and reserves shall not be kept for the fund. The department shall make such payments as it considers appropriate as funds become available from time to time. The payment of weekly disability benefits takes preference over the payment of medical benefits. No lump-sum payments of future projected benefits, including impairment awards, may be made from the fund. The board of investments shall invest the moneys of the fund. The cost of administration of the fund shall be paid out of the money in the fund.

History: En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(part); amd. Sec. 14, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' com-

pensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

Investments, Title 17, ch. 6, part 2.
"Division" defined, 39-71-116.
"Payroll" defined, 39-71-116.

39-71-504. Funding of fund — option for agreement between department and injured employee. The fund shall be funded in the following manner:

(1) The department shall require that the uninsured employer pay to the fund a penalty of either double the premium amount the employer would have paid on the payroll of the employer's workers in this state if the employer had been enrolled with compensation plan No. 3 or $200, whichever is greater. In determining the premium amount for the calculation of the penalty under this subsection, the department shall make an assessment on how much premium would have been paid on the employer's past 3-year payroll for periods within the 3 years when the employer was uninsured. An assessment for payroll paid by the uninsured employer for any time prior to July 1, 1977, may not be made.

(2) (a) The fund shall receive from an uninsured employer an amount equal to all benefits paid or to be paid from the fund to an injured employee of the uninsured employer. However, the uninsured employer's liability under this subsection (2)(a) may not exceed $50,000.

(b) The dollar limitation does not apply to an uninsured employer's liability to an injured employee or the employee's beneficiaries under 39-71-509 or 39-71-515.

(3) The department may determine that the $1,000 assessments that are charged against an insurer in each case of an industrial death under 39-71-902(1) shall be paid to the uninsured employers' fund rather than the subsequent injury fund.

(4) The department may enter into an agreement with the injured employee or the employee's beneficiaries to assign to the employee or the beneficiaries all or part of the funds received by the department from the uninsured employer pursuant to subsection (2)(a).

History: En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(2); amd. Sec. 5, Ch. 103, L. 1979; amd. Sec. 1, Ch. 601, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Division" defined, 39-71-116.
"Insurer" defined, 39-71-116.
"Injury" defined, 39-71-119.
"Uninsured employer" defined, 39-71-501.

39-71-505. Applicability of other provisions of chapter to fund. All appropriate provisions in the Workers' Compensation Act apply to the fund in the same manner as they apply to compensation plans No. 1, 2, and 3.

History: En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(5).

Cross-References

Compensation plan No. 1, Title 39, ch. 71, part 21.

Compensation plan No. 2, Title 39, ch. 71, part 22.

Compensation plan No. 3, Title 39, ch. 71, part 23.

39-71-506. Collection of payments from uninsured employer by suit. If, upon demand of the department, an uninsured employer refuses to make the payments to the fund that are provided for in subsections (1) and (2) of 39-71-504, the sums may be collected by the department through suit. The department may settle through compromise with an uninsured employer the amount due the fund under 39-71-504.

History: En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(3); amd. Sec. 63, Ch. 397, L. 1979; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Division" defined, 39-71-116.
"Uninsured employer" defined, 39-71-501.

39-71-507. Department to order uninsured employer to cease operations — noncompliance with order a misdemeanor — coordination of remedies. (1) When the department discovers an uninsured employer, it shall order him to cease operations until he has elected to be bound by a compensation plan.

(2) An employer who does not comply with the department's order to cease operations is guilty of a misdemeanor. Each day of violation is a separate offense. The county attorney may prosecute a criminal action under this subsection in the county in which the violation occurs. Prosecution under this subsection does not bar the department from enforcing its order by a civil action.

(3) The department may institute and maintain in the name of the state, through the attorney general or the county attorney of the county in which the violation occurs, an action for an injunction order or other civil remedy in district court to enforce its order to cease operations.

(4) The remedies provided in 39-71-506 and subsections (2) and (3) of this section are not mutually exclusive and may be pursued concurrently.

History: En. 92-212 by Sec. 4, Ch. 550, L. 1977; R.C.M. 1947, 92-212(6); amd. Sec. 1, Ch. 586, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Division" defined, 39-71-116.
"Uninsured employer" defined, 39-71-501.
"Misdemeanor" defined, 45-2-101.
Penalty when no penalty specified, 46-18-212.

39-71-508. Coordination of remedies. An employee who suffers an injury arising out of and in the course of employment while working for an uninsured employer as defined in 39-71-501 or an employee's beneficiaries in injuries resulting in death may pursue all remedies concurrently, including but not limited to:

(1) a claim for benefits from the uninsured employers' fund;

(2) a damage action against the employer in accordance with 39-71-509;

(3) an independent action against an employer as provided in 39-71-515; or

(4) any other civil remedy provided by law.

History: En. 92-213 by Sec. 5, Ch. 550, L. 1977; R.C.M. 1947, 92-213(part); amd. Sec. 2, Ch. 601, L. 1985.

Cross-References

"Employee" defined, 39-71-118.

"Injury" defined, 39-71-119.

"Uninsured employer" defined, 39-71-501.

39-71-509. Action against uninsured employer — limitation of employer's defenses. If an injured employee or the employee's beneficiaries bring an action to recover damages for personal injuries sustained or for death resulting from personal injuries so sustained, it is not a defense for the employer that the:

(1) employee was negligent unless such negligence was willful;

(2) injury was caused by the negligence of a fellow employee; or

(3) employee had assumed the risks inherent in, incident to, or arising out of his employment or arising from the failure of the employer to provide and maintain a reasonably safe place to work or reasonably safe tools or appliances.

History: En. 92-213 by Sec. 5, Ch. 550, L. 1977; R.C.M. 1947, 92-213(part); amd. Sec. 5, Ch. 601, L. 1985.

Cross-References

"Reasonably safe place to work" defined, 39-71-116.

"Reasonably safe tools and appliances" defined, 39-71-116.

"Employee" defined, 39-71-118.

"Injury" or "injured" defined, 39-71-119.

"Uninsured employer" defined, 39-71-501.

39-71-510. Limitation on benefit entitlement under fund. Notwithstanding the provisions of 39-71-407, 39-71-502, and 39-71-503, injured employees or an employee's beneficiaries who pursue a claim for benefits from the uninsured employers' fund are not granted an entitlement by this state for full workers' compensation benefits from the fund. Benefits from the fund must be paid in accordance with the sums in the fund. If the department determines at any time that the sums in the fund are not adequate to fully pay all claims, the department may make appropriate proportionate reductions in benefits to all claimants. The reductions do not entitle claimants to retroactive reimbursements in the future.

History: En. 92-213 by Sec. 5, Ch. 550, L. 1977; R.C.M. 1947, 92-213(2); amd. Sec. 64, Ch. 397, L. 1979; amd. Sec. 4, Ch. 601, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Division" defined, 39-71-116.

39-71-511. Setoffs to claim against fund. A claim for benefits from the uninsured employer's fund must be discharged, finally or periodically, to the extent that an employee or the employee's beneficiaries receive actual monetary compensation by judgment or settlement from the uninsured employer, a third party who shares liability as defined in 39-71-412, or a fellow employee who shares liability as defined in 39-71-413.

History: En. Sec. 3, Ch. 601, L. 1985.

39-71-512 through 39-71-514 reserved.

39-71-515. Independent cause of action. (1) An injured employee or the employee's beneficiaries have an independent cause of action against an uninsured employer for failure to be enrolled in a compensation plan as required by this chapter.

(2) In such an action, prima facie liability of the uninsured employer exists if the claimant proves, by a preponderance of the evidence, that:

(a) the employer was required by law to be enrolled under compensation plan No. 1, 2, or 3 with respect to the claimant; and

(b) the employer was not so enrolled on the date of the injury or death.

(3) It is not a defense to such an action that the employee had knowledge of or consented to the employer's failure to carry insurance or that the employee was negligent in permitting such failure to exist.

(4) The amount of recoverable damages in such an action is the amount of compensation that the employee would have received had the employer been properly enrolled under compensation plan No. 1, 2, or 3.

(5) A plaintiff who prevails in an action brought under this section is entitled to recover reasonable costs and attorney fees incurred in the action, in addition to his damages.

History: En. Sec. 6, Ch. 601, L. 1985.

Cross-References

Costs and attorney fees, Title 25, ch. 10.

39-71-516. District court venue and jurisdiction for independent cause of action. An injured employee or an employee's beneficiaries pursuing an independent cause of action pursuant to 39-71-515 must bring such action in the district court in the district where the claimant resides or where the alleged violation occurred. The court may grant such interim relief as it considers appropriate, including but not limited to injunctive relief, attachment, or receivership.

History: En. Sec. 7, Ch. 601, L. 1985.

Cross-References

Venue generally, Title 25, ch. 2.

Attachment, Title 27, ch. 18.

Injunctions, Title 27, ch. 19.

Receivership, Title 27, ch. 20.

39-71-517. Requirement to serve papers. In pursuing remedies under this part, an injured employee or his beneficiaries shall serve all pleadings and all other litigation papers on the department and the uninsured employer, regardless of whether the department or the uninsured employer is a party to the particular action to which the papers relate.

History: En. Sec. 8, Ch. 601, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

39-71-518. Setoffs against remaining liability. Any actual monetary compensation received by judgment or settlement by the injured employee or the employee's beneficiaries under 39-71-509 or 39-71-515 may be offset by the uninsured employer against his remaining liability under those sections.

History: En. Sec. 9, Ch. 601, L. 1985.

39-71-519. Settlement. The department, the uninsured employer, the injured employee or his beneficiaries, a third party who shares liability as defined in 39-71-412, or a fellow employee who shares liability as defined in 39-71-413 may enter into a settlement agreement to finally settle the rights and liabilities under this part of any or all of the parties. Such a settlement is subject to department approval in accordance with 39-71-741.

History: En. Sec. 10, Ch. 601, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Part 6

Claims for Benefits

39-71-601. Statute of limitation on presentment of claim — waiver. (1) In case of personal injury or death, all claims must be forever barred unless presented in writing to the employer, the insurer, or the department, as the case may be, within 12 months from the date of the happening of the accident, either by the claimant or someone legally authorized to act for him in his behalf.

(2) The department may waive the time requirement up to an additional 24 months upon a reasonable showing by the claimant of:

(a) lack of knowledge of disability;

(b) latent injury; or

(c) equitable estoppel.

History: En. Sec. 10, Ch. 96, L. 1915; amd. Sec. 3, Ch. 100, L. 1919; re-en. Sec. 2899, R.C.M. 1921; amd. Sec. 1, Ch. 34, L. 1935; re-en. Sec. 2899, R.C.M. 1935; amd. Sec. 1, Ch. 264, L. 1973; R.C.M. 1947, 92-601; amd. Sec. 1, Ch. 254, L. 1989; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

1989 Amendment: Chapter 254 at beginning of (2), after "The department may", deleted "upon a reasonable showing by the claimant of lack of knowledge of disability" and at end inserted "upon a reasonable showing by the claimant of"; inserted (2)(a), (2)(b), and (2)(c) qualifying "reasonable showing"; and made minor change in phraseology.

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Division" defined, 39-71-116.

"Insurer" defined, 39-71-116.

"Employer" defined, 39-71-117.

39-71-602. Statute of limitation not to apply during minority or mental incompetency unless guardian appointed. No limitation of time as provided in 39-71-601 or in this chapter, known as the Workers' Compensation Act, shall run as against any injured worker who is mentally incompetent and without a guardian or an injured minor under 18 years of age who may be without a parent or guardian. A guardian in either case may be appointed by any court of competent jurisdiction, in which event the period of limitations as provided for in 39-71-601 shall begin to run on the date of appointment of such guardian or when such minor arrives at 18 years of age, whichever date is earlier.

History: En. Sec. 10, Ch. 96, L. 1915; re-en. Sec. 2900, R.C.M. 1921; amd. Sec. 9, Ch. 121, L. 1925; re-en. Sec. 2900, R.C.M. 1935; amd. Sec. 1, Ch. 79, L. 1939; amd. Sec. 5, Ch. 235, L. 1947; R.C.M. 1947, 92-602; amd. Sec. 65, Ch. 397, L. 1979.

Cross-References

Person under disability — Statute of Limitations extended, 27-2-401.

Persons under disability — guardianship and conservatorship, Title 72, ch. 5.

39-71-603. Notice of injuries other than death to be submitted within thirty days. No claim to recover benefits under the Workers' Compensation Act, for injuries not resulting in death, may be considered compensable unless, within 30 days after the occurrence of the accident which is claimed to have caused the injury, notice of the time and place where the accident occurred and the nature of the injury is given to the employer or the employer's insurer by the injured employee or someone on the employee's behalf. Actual knowledge of the accident and injury on the part of the employer or the employer's managing agent or superintendent in charge of the work upon which the injured employee was engaged at the time of the injury is equivalent to notice.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2933, R.C.M. 1921; amd. Sec. 7, Ch. 177, L. 1929; re-en. Sec. 2933, R.C.M. 1935; amd. Sec. 9, Ch. 234, L. 1957; R.C.M. 1947, 92-807; amd. Sec. 6, Ch. 103, L. 1979; amd. Sec. 66, Ch. 397, L. 1979; amd. Sec. 1, Ch. 352, L. 1987.

Cross-References

"Insurer" defined, 39-71-116.

"Employer" defined, 39-71-117.

"Employee" defined, 39-71-118.

"Injury" defined, 39-71-119.

39-71-604. Application for compensation. (1) If a worker is entitled to benefits under this chapter, the worker shall file with the insurer or the department all reasonable information needed by the insurer to determine compensability. It is the duty of the worker's attending physician to lend all necessary assistance in making application for compensation and such proof of other matters as may be required by the rules of the department without charge to the worker. The filing of forms or other documentation by the attending physician does not constitute a claim for compensation.

(2) If death results from an injury, the parties entitled to compensation or someone in their behalf shall file a claim with the insurer or the department. The claim must be accompanied with proof of death and proof of relationship, showing the parties entitled to compensation, certificate of the attending physician, if any, and such other proof as may be required by the department.

History: (1)En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3006, R.C.M. 1921; re-en. Sec. 3006, R.C.M. 1935; amd. Sec. 6, Ch. 213, L. 1945; amd. Sec. 78, Ch. 23, L. 1975; Sec. 92-1118, R.C.M. 1947; (2)En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3008, R.C.M. 1921; re-en. Sec. 3008, R.C.M. 1935; amd. Sec. 80, Ch. 23, L. 1975; Sec. 92-1120, R.C.M. 1947; R.C.M. 1947, 92-1118, 92-1120; amd. Sec. 7, Ch. 103, L. 1979; amd. Sec. 2, Ch. 525, L. 1987; amd. Sec. 22, Ch. 613, L. 1989.

Compiler's Comments

1989 Amendment: In four places changed "division" to "department"; deleted former (3) that provided Division goal to process all claims within 14 days of initial acceptance; and made minor changes in phraseology. Amendment effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

Cross-References

"Division" defined, 39-71-116.

"Insurer" defined, 39-71-116.

"Physician" defined, 39-71-116.

"Injury" or "injured" defined, 39-71-119.

39-71-605. Examination of employee by physician — effect of refusal to submit to examination — report and testimony of physician — cost. (1) (a) Whenever in case of injury the right to compensation under this chapter would exist in favor of any employee, he shall, upon the written request of the insurer, submit from time to time to examination by a physician or panel of physicians, who shall be provided and paid for by such insurer, and shall likewise submit to examination from time to time by any physician or panel of physicians selected by the department.

(b) The request or order for such examination shall fix a time and place therefor, due regard being had to the convenience of the employee and his physical condition and ability to attend at the time and place fixed. The employee shall be entitled to have a physician present at any such examination. So long as the employee, after such written request, shall fail or refuse to submit to such examination or shall in any way obstruct the same, his right to compensation shall be suspended. Any physician or panel of physicians employed by the insurer or the department who shall make or be present at any such examination may be required to testify as to the results thereof.

(2) In the event of a dispute concerning the physical condition of a claimant or the cause or causes of the injury or disability, if any, the department, at the request of the claimant or insurer, as the case may be, shall require the claimant to submit to such examination as it may deem desirable by a physician or panel of physicians within the state or elsewhere who have had adequate and substantial experience in the particular field of medicine concerned with the matters presented by the dispute. The physician or panel of physicians making the examination shall file a written report of findings with the department for its use in the determination of the controversy involved. The department shall pay the physician or panel of physicians for the examination and shall be reimbursed by the party who requested it.

(3) This section does not apply to impairment evaluations provided for in 39-71-711.

History: (1)En. Sec. 13, Ch. 96, L. 1915; re-en. Sec. 2906, R.C.M. 1921; re-en. Sec. 2906, R.C.M. 1935; amd. Sec. 16, Ch. 23, L. 1975; Sec. 92-609, R.C.M. 1947; (2)En. Sec. 10, Ch. 234, L. 1957; amd. Sec. 27, Ch. 23, L. 1975; Sec. 92-814.1, R.C.M. 1947; R.C.M. 1947, 92-609, 92-814.1; amd. Sec. 1, Ch. 422, L. 1985; amd. Sec. 15, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

Procedural rules on physical and mental exams, Rule 35, M.R.Civ.P. (see Title 25, ch. 20).

"Division" defined, 39-71-116.
"Insurer" defined, 39-71-116.
"Physician" defined, 39-71-116.
"Employer" defined, 39-71-117.
"Employee" defined, 39-71-118.
"Injured" or "injury" defined, 39-71-119.

39-71-606. Insurer to accept or deny claim within thirty days of receipt — notice of denial — notice to employer. (1) Every insurer under any plan for the payment of workers' compensation benefits shall, within 30 days of receipt of a claim for compensation, either accept or deny the claim, and if denied shall inform the claimant and the department in writing of such denial.

(2) Upon the request of an employer it insures, an insurer shall notify the employer of all compensation benefits that are ongoing and are being charged against that employer's account.

History: **En. Sec. 1, Ch. 477, L. 1973; amd. Sec. 1, Ch. 173, L. 1974; R.C.M. 1947, 92-615(part); amd. Sec. 1, Ch. 122, L. 1981; amd. Sec. 64, Ch. 613, L. 1989.**

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Division" defined, 39-71-116.
"Insurer" defined, 39-71-116.
"Employer" defined, 39-71-117.

39-71-607. Suspension of payments by insurer up to thirty days pending receipt of medical information. Under rules adopted by the department and in the discretion of the department, an insurer may suspend compensation payments for not more than 30 days pending the receipt of medical information.

History: **En. Sec. 2, Ch. 477, L. 1973; amd. Sec. 2, Ch. 173, L. 1974; R.C.M. 1947, 92-616(part); amd. Sec. 64, Ch. 613, L. 1989.**

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Division" defined, 39-71-116.
"Insurer" defined, 39-71-116.

39-71-608. Payments within thirty days by insurer without admission of liability or waiver of defense authorized — notice. An insurer may, after written notice to the claimant and the department, make payment of compensation benefits within 30 days of receipt of a claim for compensation without such payments being construed as an admission of liability or a waiver of any right of defense.

History: **En. Sec. 1, Ch. 477, L. 1973; amd. Sec. 1, Ch. 173, L. 1974; R.C.M. 1947, 92-615(part); amd. Sec. 64, Ch. 613, L. 1989.**

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Division" defined, 39-71-116.
"Insurer" defined, 39-71-116.

39-71-609. Denial of claim after payments made or termination of all benefits or reduction to partial benefits by insurer — fourteen days' notice required. If an insurer determines to deny a claim on which payments have been made under 39-71-608 during a time of further investigation or, after a claim has been accepted, terminates all biweekly compensation benefits, it may do so only after 14 days' written notice to the claimant, the claimant's authorized representative, if any, and the department. For injuries occurring prior to July 1, 1987, an insurer must give 14 days' written notice to the claimant before reducing benefits from total to partial. However, if an insurer has knowledge that a claimant has returned to work, compensation benefits may be terminated as of the time the claimant returned to work.

History: En. Sec. 1, Ch. 477, L. 1973; amd. Sec. 1, Ch. 173, L. 1974; R.C.M. 1947, 92-615(part); amd. Sec. 8, Ch. 103, L. 1979; amd. Sec. 5, Ch. 333, L. 1989; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

1989 Amendment: Chapter 333 in middle of first sentence, before "biweekly compensation benefits", inserted "all"; and inserted second sentence providing that for injuries occurring prior to July 1, 1987, insurer must give 14 days' written notice to claimant before reducing benefits from total to partial. Amendment effective July 1, 1989.

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Division" defined, 39-71-116.

"Insurer" defined, 39-71-116.

39-71-610. Termination of benefits by insurer — department order to pay disputed benefits prior to hearing — limitation on order — right of reimbursement. If an insurer terminates biweekly compensation benefits and the termination of compensation benefits is disputed by the claimant, the department may, upon written request, order an insurer to pay additional biweekly compensation benefits prior to a hearing, but in no event may the biweekly compensation benefits be ordered to be paid under this section for a period exceeding 49 days or for any period subsequent to the date of a hearing. If after a hearing it is held that the insurer was not liable for the compensation payments ordered by the department, the insurer has the right to be reimbursed for such payments by the claimant.

History: En. 92-617 by Sec. 1, Ch. 124, L. 1975; R.C.M. 1947, 92-617; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Division" defined, 39-71-116.

"Insurer" defined, 39-71-116.

39-71-611. Costs and attorneys' fees payable on denial of claim or termination of benefits later found compensable. (1) The insurer shall pay reasonable costs and attorney fees as established by the workers' compensation court if:

(a) the insurer denies liability for a claim for compensation or terminates compensation benefits;

(b) the claim is later adjudged compensable by the workers' compensation court; and

(c) in the case of attorneys' fees, the workers' compensation court determines that the insurer's actions in denying liability or terminating benefits were unreasonable.

(2) A finding of unreasonableness against an insurer made under this section does not constitute a finding that the insurer acted in bad faith or violated the unfair trade practices provisions of Title 33, chapter 18.

History: En. Sec. 2, Ch. 477, L. 1973; amd. Sec. 2, Ch. 173, L. 1974; R.C.M. 1947, 92-616(part); amd. Sec. 2, Ch. 63, L. 1979; amd. Sec. 16, Ch. 464, L. 1987.

Cross-References
Attorneys' fees, Title 25, ch. 10, part 3.
"Insurer" defined, 39-71-116.

39-71-612. Costs and attorneys' fees that may be assessed against an insurer by workers' compensation judge. (1) If an insurer pays or submits a written offer of payment of compensation under chapter 71 or 72 of this title but controversy relates to the amount of compensation due, the case is brought before the workers' compensation judge for adjudication of the controversy, and the award granted by the judge is greater than the amount paid or offered by the insurer, a reasonable attorney's fee and costs as established by the workers' compensation judge if the case has gone to a hearing may be awarded by the judge in addition to the amount of compensation.

(2) An award of attorneys' fees under subsection (1) may only be made if it is determined that the actions of the insurer were unreasonable. Any written offer of payment made 30 days or more before the date of hearing must be considered a valid offer of payment for the purposes of this section.

(3) A finding of unreasonableness against an insurer made under this section does not constitute a finding that the insurer acted in bad faith or violated the unfair trade practices provisions of Title 33, chapter 18.

History: En. 92-618 by Sec. 1, Ch. 187, L. 1975; R.C.M. 1947, 92-618; amd. Sec. 1, Ch. 575, L. 1985; amd. Sec. 17, Ch. 464, L. 1987.

Cross-References
Attorneys' fees, Title 25, ch. 10, part 3.
"Division" defined, 39-71-116.
"Insurer" defined, 39-71-116.
"Employer" defined, 39-71-117.

39-71-613. Regulation of attorneys' fees — forfeiture of fee for noncompliance. (1) When an attorney represents or acts on behalf of a claimant or any other party on any workers' compensation claim, the attorney shall submit to the department a contract of employment, on a form provided by the department, stating specifically the terms of the fee arrangement between the attorney and the claimant.

(2) The department may regulate the amount of the attorney's fee in any workers' compensation case. In regulating the amount of the fee, the department shall consider:

(a) the benefits the claimant gained due to the efforts of the attorney;
(b) the time the attorney was required to spend on the case;
(c) the complexity of the case; and
(d) any other relevant matter the department may consider appropriate.

(3) If an attorney violates a provision of this section, a rule adopted under this section, or an order fixing an attorney's fee under this section, he shall forfeit the right to any fee which he may have collected or been entitled to collect.

History: En. 92-619 by Sec. 1, Ch. 402, L. 1975; R.C.M. 1947, 92-619; amd. Sec. 18, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Section 64, Ch. 613, L. 1989, provided that in this section the Code Commissioner is directed to change the term "administrator" or "his" to "department", meaning the Department of Labor and Industry.

Cross-References
Attorneys' fees, Title 25, ch. 10, part 3.
"Division" defined, 39-71-116.
"Order" defined, 39-71-116.

39-71-614. Calculation of attorney fees — limitation. (1) The amount of an attorney's fee assessed against an insurer under 39-71-611 or 39-71-612 must be based exclusively on the time spent by the attorney in representing the claimant on the issues brought to hearing. The attorney must document the time spent, but the judge is not bound by the documentation submitted.

(2) The judge shall determine a reasonable attorney fee and assess costs. The hourly rate applied to the time spent must be based on the attorney's customary and current hourly rate for legal work performed in this state, subject to a maximum established by the department.

(3) This section does not restrict a claimant and an attorney from entering into a contingency fee arrangement under which the attorney receives a percentage of the amount of compensation payments received by the claimant because of the efforts of the attorney. However, an amount equal to any fee and costs assessed against an insurer under 39-71-611 or 39-71-612 and this section must be deducted from the fee an attorney is entitled to from the claimant under a contingency fee arrangement.

History: En. Sec. 2, Ch. 575, L. 1985; amd. Sec. 19, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments
Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References
Attorneys' fees, Title 25, ch. 10, part 3.

Part 7

Compensation and Benefits Generally

Part Cross-References
Workers' compensation exempt from medical services lien, 71-3-1118.

39-71-701. Compensation for temporary total disability. (1) Subject to the limitation in 39-71-736, a worker is eligible for temporary total disability benefits when the worker suffers a total loss of wages as a result of an injury and until the worker reaches maximum healing.

(2) The determination of temporary total disability must be supported by a preponderance of medical evidence.

(3) Weekly compensation benefits for injury producing temporary total disability shall be 66 ⅔% of the wages received at the time of the injury. The maximum weekly compensation benefits may not exceed the state's average weekly wage at the time of injury. Temporary total disability benefits must be paid for the duration of the worker's temporary disability. The weekly benefit amount may not be adjusted for cost of living as provided in 39-71-702(5).

(4) In cases where it is determined that periodic disability benefits granted by the Social Security Act are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero, by an amount

equal, as nearly as practical, to one-half the federal periodic benefits for such week, which amount is to be calculated from the date of the disability social security entitlement.

(5) Notwithstanding subsection (3), beginning July 1, 1987, through June 30, 1991, weekly compensation benefits for temporary total disability may not exceed the state's average weekly wage of $299 established July 1, 1986.

History: En. 92-701.1 by Sec. 1, Ch. 471, L. 1973; R.C.M. 1947, 92-701.1; amd. Sec. 5, Ch. 21, L. 1981; amd. Sec. 21, Ch. 464, L. 1987; amd. Sec. 4, Ch. 9, Sp. L. June 1989.

Compiler's Comments

1989 Special Session Amendment: In (5) reimposed benefit freeze that ended June 30, 1989, to continue through June 30, 1991; and made minor changes in phraseology. Amendment effective July 17, 1989.

Cross-References

"Average weekly wage" defined, 39-71-116.

"Temporary total disability" defined, 39-71-116.

"Wages" defined, 39-71-116.

"Injury" or "injured" defined, 39-71-119.

39-71-702. Compensation for permanent total disability. (1) If a worker is no longer temporarily totally disabled and is unable to return to work due to injury, the worker is eligible for permanent total disability benefits. At an insurer's request, an evaluation of all options under 39-71-1012 must be made before permanent total disability status is determined. Permanent total disability benefits must be paid for the duration of the worker's permanent total disability, subject to 39-71-710 and 39-71-1026.

(2) The determination of permanent total disability must be supported by a preponderance of medical evidence.

(3) Weekly compensation benefits for an injury resulting in permanent total disability shall be 66⅔% of the wages received at the time of the injury. The maximum weekly compensation benefits shall not exceed the state's average weekly wage at the time of injury.

(4) In cases where it is determined that periodic disability benefits granted by the Social Security Act are payable because of the injury, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for such week, which amount is to be calculated from the date of the disability social security entitlement.

(5) A worker's benefit amount must be adjusted for a cost-of-living increase on the next July 1 after 104 weeks of permanent total disability benefits have been paid and on each succeeding July 1. A worker may not receive more than 10 such adjustments. The adjustment must be the percentage increase, if any, in the state's average weekly wage as adopted by the department over the state's average weekly wage adopted for the previous year or 3%, whichever is less.

(6) Notwithstanding subsection (3), beginning July 1, 1987, through June 30, 1991, the maximum weekly compensation benefits for permanent total disability may not exceed the state's average weekly wage of $299 established July 1, 1986.

History: En. 92-702.1 by Sec. 1, Ch. 202, L. 1973; amd. Sec. 1, Ch. 272, L. 1974; R.C.M. 1947, 92-702.1; amd. Sec. 6, Ch. 21, L. 1981; amd. Sec. 22, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 5, Ch. 9, Sp. L. June 1989.

Compiler's Comments

1989 Special Session Amendment: In (6) reimposed benefit freeze that ended June 30, 1989, to continue through June 30, 1991. Amendment effective July 17, 1989.

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Average weekly wage" defined, 39-71-116.

"Permanent total disability" defined, 39-71-116.

"Wages" defined, 39-71-116.

"Injury" or "injured" defined, 39-71-119.

39-71-703. Compensation for permanent partial disability — impairment awards and wage supplements. (1) The benefits available for permanent partial disability are impairment awards and wage supplements. A worker who has reached maximum healing and is not eligible for permanent total disability benefits but who has a medically determined physical restriction as a result of a work-related injury may be eligible for an impairment award and wage supplement benefits as follows:

(a) The following procedure must be followed for an impairment award:

(i) Each percentage point of impairment is compensated in an amount equal to 5 weeks times 66 ⅔% of the wages received at the time of the injury, subject to a maximum compensation rate of one-half of the state's average weekly wage at the time of injury.

(ii) When a worker reaches maximum healing, an impairment rating is rendered by one or more physicians as provided for in 39-71-711. Impairment benefits are payable beginning the date of maximum healing.

(iii) An impairment award may be paid biweekly or in a lump sum, at the discretion of the worker. Lump sums paid for impairments are not subject to the requirements set forth in 39-71-741, except that lump-sum conversions for benefits not accrued may be reduced to present value at the rate set forth by the department in 39-71-741(5).

(iv) If a worker becomes eligible for permanent total disability benefits, the insurer may recover any lump-sum advance paid to a claimant for impairment, as set forth in 39-71-741(5). Such right of recovery does not apply to lump-sum benefits paid for the period prior to claimant's eligibility for permanent total disability benefits.

(v) If a worker suffers additional injury, an impairment award payable for the additional injury must be reduced by the amount of a previous award paid for impairment to the same site on the body.

(b) The following procedure must be followed for a wage supplement:

(i) A worker must be compensated in weekly benefits equal to 66 ⅔% of the difference between the worker's actual wages received at the time of the injury and the wages the worker is qualified to earn in the worker's job pool, subject to a maximum compensation rate of one-half the state's average weekly wage at the time of injury.

(ii) Eligibility for wage supplement benefits begins at maximum healing and terminates at the expiration of 500 weeks minus the number of weeks for which a worker's impairment award is payable, subject to 39-71-710. A worker's failure to sustain a wage loss compensable under subsection (1)(b)(i) does not extend the period of eligibility. However, if a worker becomes eligible for temporary total disability, permanent total disability, or total rehabilitation benefits after reaching maximum healing, the eligibility period for wage supplement benefits is extended by any period for which a worker is compensated by those benefits after reaching maximum healing.

(2) The determination of permanent partial disability must be supported by a preponderance of medical evidence.

(3) Notwithstanding subsection (1), beginning July 1, 1987, through June 30, 1991, the maximum weekly compensation benefits for permanent partial disability may not exceed $149.50, which is one-half the state's average weekly wage established July 1, 1986.

History: En. 92-703.1 by Sec. 1, Ch. 155, L. 1973; amd. Sec. 1, Ch. 241, L. 1975; amd. Sec. 1, Ch. 278, L. 1975; R.C.M. 1947, 92-703.1; amd. Sec. 23, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 6, Ch. 9, Sp. L. June 1989.

Compiler's Comments

1989 Special Session Amendment: In (3) reimposed benefit freeze that ended June 30, 1989, to continue through June 30, 1991. Amendment effective July 17, 1989.

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Average weekly wage" defined, 39-71-116.

"Injury" or "injured" defined, 39-71-119.

39-71-704. Payment of medical, hospital, and related services — fee schedules and hospital rates. (1) In addition to the compensation provided by this chapter and as an additional benefit separate and apart from compensation, the following must be furnished:

(a) After the happening of the injury, the insurer shall furnish, without limitation as to length of time or dollar amount, reasonable services by a physician or surgeon, reasonable hospital services and medicines when needed, and such other treatment as may be approved by the department for the injuries sustained.

(b) The insurer shall replace or repair prescription eyeglasses, prescription contact lenses, prescription hearing aids, and dentures that are damaged or lost as a result of an injury, as defined in 39-71-119, arising out of and in the course of employment.

(c) The insurer shall reimburse a worker for reasonable travel expenses incurred in travel to a medical provider for treatment of an injury pursuant to rules adopted by the department. Reimbursement must be at the rates allowed for reimbursement of travel by state employees.

(2) A relative value fee schedule for medical, chiropractic, and paramedical services provided for in this chapter, excluding hospital services, must be established annually by the department and become effective in January of each year. The maximum fee schedule must be adopted as a relative value fee schedule of medical, chiropractic, and paramedical services, with unit values to indicate the relative relationship within each grouping of specialties. Medical fees must be based on the median fees as billed to the state fund during the year preceding the adoption of the schedule. The state fund shall report fees billed in the form and at the times required by the department. The department shall adopt rules establishing relative unit values, groups of specialties, the procedures insurers must use to pay for services under the schedule, and the method of determining the median of billed medical fees. These rules must be modeled on the 1974 revision of the 1969 California Relative Value Studies.

(3) Beginning January 1, 1988, the department shall establish rates for hospital services necessary for the treatment of injured workers. Approved

rates must be in effect for a period of 12 months from the date of approval. The department may coordinate this ratesetting function with other public agencies that have similar responsibilities.

(4) Notwithstanding subsection (2), beginning January 1, 1988, through December 31, 1991, the maximum fees payable by insurers must be limited to the relative value fee schedule established in January 1987. Notwithstanding subsection (3), beginning January 1, 1988, through December 31, 1991, the hospital rates payable by insurers must be limited to those set in January 1988.

History: En. 92-706.1 by Sec. 1, Ch. 252, L. 1973; amd. Sec. 1, Ch. 43, L. 1975; amd. Sec. 1, Ch. 189, L. 1975; R.C.M. 1947, 92-706.1(1); amd. Sec. 1, Ch. 90, L. 1981; amd. Sec. 2, Ch. 422, L. 1985; amd. Sec. 25, Ch. 464, L. 1987; amd. Sec. 4, Ch. 333, L. 1989; amd. Secs. 23, 64, Ch. 613, L. 1989; amd. Sec. 7, Ch. 9, Sp. L. June 1989.

Compiler's Comments

1989 Special Session Amendment: In (4) extended through December 31, 1991, freeze on maximum fee schedule for medical, hospital, and related services scheduled to end January 1, 1990. Amendment effective July 17, 1989.

1989 Amendments: Chapter 333 inserted (1)(c) requiring insurer to reimburse worker for reasonable travel expenses relating to medical treatment under rules at rate allowed for state employee travel; and made minor changes in phraseology. Amendment effective July 1, 1989.

Chapter 613 in five places changed "division" and "workers' compensation division" to "department"; in (2), in middle of third sentence, changed "state compensation insurance fund" to "state fund" and inserted fourth sentence requiring state fund to report fees billed in form and at times required by Department; and made minor changes in phraseology. Amendment effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

Cross-References

"Division" defined, 39-71-116.
"Insurer" defined, 39-71-116.
"Physician" defined, 39-71-116.
"Employer" defined, 39-71-117.
"Injury" or "injured" defined, 39-71-119.

39-71-705. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 8, Ch. 100, L. 1919; amd. Sec. 5, Ch. 196, L. 1921; re-en. Sec. 2920, R.C.M. 1921; amd. Sec. 16, Ch. 121, L. 1925; amd. Sec. 16, Ch. 177, L. 1929; re-en. Sec. 2920, R.C.M. 1935; amd. Sec. 5, Ch. 213, L. 1945; amd. Sec. 5, Ch. 230, L. 1947; amd. Sec. 6, Ch. 7, L. 1949; amd. Sec. 5, Ch. 48, L. 1951; amd. Sec. 5, Ch. 38, L. 1953; amd. Sec. 6, Ch. 253, L. 1955; amd. Sec. 7, Ch. 234, L. 1957; amd. Sec. 5, Ch. 162, L. 1961; amd. Sec. 5, Ch. 149, L. 1965; amd. Sec. 5, Ch. 207, L. 1967; amd. Sec. 1, Ch. 140, L. 1971; amd. Sec. 1, Ch. 204, L. 1973; amd. Sec. 2, Ch. 386, L. 1975; R.C.M. 1947, 92-709(part).

39-71-706. Repealed. Sec. 68, Ch. 464, L. 1987.

History: (1), (2), (4)En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 8, Ch. 100, L. 1919; amd. Sec. 5, Ch. 196, L. 1921; re-en. Sec. 2920, R.C.M. 1921; amd. Sec. 16, Ch. 121, L. 1925; amd. Sec. 16, Ch. 177, L. 1929; re-en. Sec. 2920, R.C.M. 1935; amd. Sec. 5, Ch. 213, L. 1945; amd. Sec. 5, Ch. 230, L. 1947; amd. Sec. 6, Ch. 7, L. 1949; amd. Sec. 5, Ch. 48, L. 1951; amd. Sec. 5, Ch. 38, L. 1953; amd. Sec. 6, Ch. 253, L. 1955; amd. Sec. 7, Ch. 234, L. 1957; amd. Sec. 5, Ch. 162, L. 1961; amd. Sec. 5, Ch. 149, L. 1965; amd. Sec. 5, Ch. 207, L. 1967; amd. Sec. 1, Ch. 140, L. 1971; amd. Sec. 1, Ch. 204, L. 1973; amd. Sec. 2, Ch. 386, L. 1975; Sec. 92-709, R.C.M. 1947; (3)En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2922, R.C.M. 1921; re-en. Sec. 2922, R.C.M. 1935; Sec. 92-711, R.C.M. 1947; R.C.M. 1947, 92-709(part), 92-711.

39-71-707. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 8, Ch. 100, L. 1919; amd. Sec. 5, Ch. 196, L. 1921; re-en. Sec. 2920, R.C.M. 1921; amd. Sec. 16, Ch. 121, L. 1925; amd. Sec. 16, Ch. 177, L. 1929; re-en. Sec. 2920, R.C.M. 1935; amd. Sec. 5, Ch. 213, L. 1945; amd. Sec. 5, Ch. 230, L. 1947; amd. Sec. 6, Ch. 7, L. 1949; amd. Sec. 5, Ch. 48, L. 1951; amd. Sec. 5, Ch. 38, L. 1953; amd. Sec. 6, Ch. 253, L. 1955; amd. Sec. 7, Ch. 234, L. 1957; amd. Sec. 5, Ch. 162, L. 1961; amd. Sec. 5, Ch. 149, L. 1965; amd. Sec. 5, Ch. 207, L. 1967; amd. Sec. 1, Ch. 140, L. 1971; amd. Sec. 1, Ch. 204, L. 1973; amd. Sec. 2, Ch. 386, L. 1975; R.C.M. 1947, 92-709(part).

39-71-708. Compensation for disfigurement. (1) The department may award proper and equitable benefits for serious face, head, or neck disfigurement, not to exceed $2,500, in addition to benefits payable under 39-71-703.

(2) No payment under this section shall be in lieu of the separate benefit of medical and hospital services or of any benefits paid under 39-71-701 for temporary total disability.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 8, Ch. 100, L. 1919; amd. Sec. 5, Ch. 196, L. 1921; re-en. Sec. 2920, R.C.M. 1921; amd. Sec. 16, Ch. 121, L. 1925; amd. Sec. 16, Ch. 177, L. 1929; re-en. Sec. 2920, R.C.M. 1935; amd. Sec. 5, Ch. 213, L. 1945; amd. Sec. 5, Ch. 230, L. 1947; amd. Sec. 6, Ch. 7, L. 1949; amd. Sec. 5, Ch. 48, L. 1951; amd. Sec. 5, Ch. 38, L. 1953; amd. Sec. 6, Ch. 253, L. 1955; amd. Sec. 7, Ch. 234, L. 1957; amd. Sec. 5, Ch. 162, L. 1961; amd. Sec. 5, Ch. 149, L. 1965; amd. Sec. 5, Ch. 207, L. 1967; amd. Sec. 1, Ch. 140, L. 1971; amd. Sec. 1, Ch. 204, L. 1973; amd. Sec. 2, Ch. 386, L. 1975; R.C.M. 1947, 92-709(part); amd. Sec. 26, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Division" defined, 39-71-116.

"Temporary total disability" defined, 39-71-116.

39-71-709. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. 92-709.2 by Sec. 1, Ch. 386, L. 1975; R.C.M. 1947, 92-709.2.

39-71-710. Termination of benefits upon retirement. (1) If a claimant is receiving disability or rehabilitation compensation benefits and the claimant receives social security retirement benefits or is eligible to receive full social security retirement benefits, the claimant is considered to be retired. When the claimant is considered retired, the liability of the insurer is ended for payment of wage supplement, permanent total disability, and rehabilitation compensation benefits. However, the insurer remains liable for temporary total disability benefits, any impairment award, and medical benefits.

(2) If a claimant who is eligible to receive social security retirement benefits and is gainfully employed suffers a work-related injury, the insurer retains liability for temporary total disability benefits, any impairment award, and medical benefits.

History: En. Sec. 1, Ch. 386, L. 1981; amd. Sec. 27, Ch. 464, L. 1987.

Cross-References

"Insurer" defined, 39-71-116.

"Permanent partial disability" defined, 39-71-116.

39-71-711. Impairment evaluation — ratings. (1) An impairment rating:

(a) is a purely medical determination and must be determined by an impairment evaluator after a claimant has reached maximum healing;

(b) must be based on the current edition of the Guides to Evaluation of Permanent Impairment published by the American medical association; and

(c) must be expressed as a percentage of the whole person.

(2) A claimant or insurer, or both, may obtain an impairment rating from a medical doctor or from a chiropractor if the claimant's treating physician

is a chiropractor. If the claimant and insurer cannot agree upon the rating, the procedure in subsection (3) must be followed.

(3) (a) Upon request of the claimant or insurer, the department shall direct the claimant to an evaluator for a rating. The evaluator shall:

(i) evaluate the claimant to determine the degree of impairment, if any, that exists due to the injury; and

(ii) submit a report to the department, the claimant, and the insurer.

(b) Unless the following procedure is followed, the insurer shall begin paying the impairment award, if any, within 30 days of the evaluator's mailing of the report:

(i) Either the claimant or the insurer, within 15 days after the date of mailing of the report by the first evaluator, may request that the claimant be evaluated by a second evaluator. If a second evaluation is requested, the department shall direct the claimant to a second evaluator, who shall determine the degree of impairment, if any, that exists due to the injury.

(ii) The reports of both examinations must be submitted to a third evaluator, who may also examine the claimant or seek other consultation. The three evaluators shall consult with one another, and then the third evaluator shall submit a final report to the department, the claimant, and the insurer. The final report must state the degree of impairment, if any, that exists due to the injury.

(iii) Unless either party disputes the rating in the final report as provided in subsection (6), the insurer shall begin paying the impairment award, if any, within 45 days of the date of mailing of the report by the third evaluator.

(4) The department shall appoint impairment evaluators to render ratings under subsection (1). The department shall adopt rules that set forth the qualifications of evaluators and the locations of examinations. An evaluator must be a physician licensed under Title 37, chapter 3, except if the claimant's treating physician is a chiropractor, the evaluator may be a chiropractor who is certified as an evaluator under chapter 12. The department may seek nominations from the board of medical examiners for evaluators licensed under Title 37, chapter 3, and from the board of chiropractors for evaluators licensed under Title 37, chapter 12.

(5) The cost of impairment evaluations is assessed to the insurer, except that the cost of an evaluation under subsection (3)(b)(i) or (3)(b)(ii) is assessed to the requesting party.

(6) A party may dispute a final impairment rating rendered under subsection (3)(b)(ii) by filing a petition with the workers' compensation court within 15 days of the evaluator's mailing of the report. Disputes over impairment ratings are not subject to 39-71-605 or to mandatory mediation.

(7) An impairment rating rendered under subsection (3) is presumed correct. This presumption is rebuttable.

History: En. Sec. 24, Ch. 464, L. 1987; amd. Sec. 2, Ch. 161, L. 1989; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

1989 Amendment: Chapter 161 at end of first sentence of (2) substituted "a medical doctor or from a chiropractor if the claimant's treating physician is a chiropractor" for "a physician of the party's choice"; and in third sentence of (4) inserted "except if the claimant's treating physician is a chiropractor, the evaluator may be a chiropractor who is certified as an evaluator under chapter 12" and at end of fourth sentence inserted "for evaluators licensed under Title 37, chapter 3, and from the board of chiropractors for evaluators licensed under Title 37, chapter 12".

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

39-71-712 through 39-71-720 reserved.

39-71-721. Compensation for injury causing death — limitation. (1) (a) If an injured employee dies and the injury was the proximate cause of such death, then the beneficiary of the deceased is entitled to the same compensation as though the death occurred immediately following the injury. A beneficiary's eligibility for benefits commences after the date of death, and the benefit level is established as set forth in subsection (2).

(b) The insurer is entitled to recover any overpayments or compensation paid in a lump sum to a worker prior to death but not yet recouped. The insurer shall recover such payments from the beneficiary's biweekly payments as provided in 39-71-741(5).

(2) To beneficiaries as defined in 39-71-116(2)(a) through (2)(d), weekly compensation benefits for an injury causing death are 66⅔% of the decedent's wages. The maximum weekly compensation benefit may not exceed the state's average weekly wage at the time of injury. The minimum weekly compensation benefit is 50% of the state's average weekly wage, but in no event may it exceed the decedent's actual wages at the time of his death.

(3) To beneficiaries as defined in 39-71-116(2)(e) and (2)(f), weekly benefits must be paid to the extent of the dependency at the time of the injury, subject to a maximum of 66⅔% of the decedent's wages. The maximum weekly compensation may not exceed the state's average weekly wage at the time of injury.

(4) If the decedent leaves no beneficiary as defined in 39-71-116(2), a lump-sum payment of $3,000 must be paid to the decedent's surviving parent or parents.

(5) If any beneficiary of a deceased employee dies, the right of such beneficiary to compensation under this chapter ceases. Death benefits must be paid to a surviving spouse for 500 weeks subsequent to the date of the deceased employee's death or until the spouse's remarriage, whichever occurs first. After benefit payments cease to a surviving spouse, death benefits must be paid to beneficiaries, if any, as defined in 39-71-116(2)(b) through (2)(d).

(6) In all cases, benefits must be paid to beneficiaries, as defined in 39-71-116(2).

(7) Benefits paid under this section may not be adjusted for cost of living as provided in 39-71-702.

(8) Notwithstanding subsections (2) and (3), beginning July 1, 1987, through June 30, 1991, the maximum weekly compensation benefits for injury causing death may not exceed the state's average weekly wage of $299 established July 1, 1986. Beginning July 1, 1987, through June 30, 1991, the minimum weekly compensation for injury causing death shall be $149.50, which is 50% of the state's average weekly wage established July 1, 1986, but in no event may it exceed the decedent's actual wages at the time of death.

History: (1)En. Sec. 12, Ch. 96, L. 1915; re-en. Sec. 2905, R.C.M. 1921; re-en. Sec. 2905, R.C.M. 1935; amd. Sec. 15, Ch. 23, L. 1975; Sec. 92-608, R.C.M. 1947; (2) thru (6)Ap. p.

92-704.1 by Sec. 1, Ch. 203, L. 1973; amd. Sec. 2, Ch. 269, L. 1974; amd. Sec. 1, Ch. 270, L. 1974; amd. Sec. 2, Ch. 272, L. 1974; Sec. 92-704.1, R.C.M. 1947; Ap. p. Sec. 7, Ch. 96, L. 1915; re-en. Sec. 2892, R.C.M. 1921; re-en. Sec. 2892, R.C.M. 1935; amd. Sec. 10, Ch. 23, L. 1975; Sec. 92-502, R.C.M. 1947; R.C.M. 1947, 92-704.1, 92-502, 92-608(1); amd. Sec. 67, Ch. 197, L. 1979; amd. Sec. 29, Ch. 464, L. 1987; amd. Sec. 8, Ch. 9, Sp. L. June 1989.

Compiler's Comments

1989 Special Session Amendment: In (8) reimposed death benefit freeze that ended June 30, 1989, to continue through June 30, 1991. Amendment effective July 17, 1989.

Cross-References

"Average weekly wage" defined, 39-71-116.

"Beneficiary" defined, 39-71-116.

"Husband" or "widower" defined, 39-71-116.

"Wages" defined, 39-71-116.

"Wife" or "widow" defined, 39-71-116.

"Employee" defined, 39-71-118.

"Injury" or "injured" defined, 39-71-119.

39-71-722. Who constitutes beneficiary to be determined as of date of accident. The question as to who constitutes a beneficiary shall be determined as of the date of the happening of the accident to the employee, whether death shall immediately result therefrom or not.

History: En. Sec. 12, Ch. 96, L. 1915; re-en. Sec. 2905, R.C.M. 1921; re-en. Sec. 2905, R.C.M. 1935; amd. Sec. 15, Ch. 23, L. 1975; R.C.M. 1947, 92-608(3).

Cross-References

"Beneficiary" defined, 39-71-116.

"Employee" defined, 39-71-118.

39-71-723. How compensation to be divided among beneficiaries. Compensation due to beneficiaries shall be paid to the surviving spouse, if any, or if none, then divided equally among or for the benefit of the children. In cases where beneficiaries are a surviving spouse and stepchildren of such spouse, the compensation shall be divided equally among all beneficiaries. Compensation due to beneficiaries as defined in subsections (2)(e) and (2)(f) of 39-71-116, where there is more than one, shall be divided equitably among them, and the question of dependency and amount thereof shall be a question of fact for determination by the department.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2919, R.C.M. 1921; amd. Sec. 15, Ch. 121, L. 1925; re-en. Sec. 2919, R.C.M. 1935; amd. Sec. 4, Ch. 213, L. 1945; amd. Sec. 7, Ch. 235, L. 1947; amd. Sec. 7, Ch. 253, L. 1955; amd. Sec. 1, Ch. 205, L. 1973; amd. Sec. 3, Ch. 269, L. 1974; R.C.M. 1947, 92-708(part); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Division" defined, 39-71-116.

39-71-724. Payment of compensation to beneficiary not a resident of United States. (1) Before payment of compensation to a beneficiary not residing within the United States, satisfactory proof of such relationship as to constitute a beneficiary under this chapter shall be furnished by such beneficiary, duly authenticated under seal of an officer of a court of law in the country where such beneficiary resides, at such times and in such manner as may be required by the department. Such proof shall be conclusive as to the identity of such beneficiary, and any other claim of any other person to any such compensation shall be barred from and after the filing of such proof.

(2) Payment of compensation to a beneficiary not residing within the United States may be made to any plenipotentiary or consul or consular agent

within the United States representing the country in which such nonresident beneficiary resides, and the written receipt of such plenipotentiary or consul or consular agent shall acquit the employer, the insurer, or the department, as the case may be.

History: (1)En. Sec. 8, Ch. 96, L. 1915; re-en. Sec. 2896, R.C.M. 1921; re-en. Sec. 2896, R.C.M. 1935; amd. Sec. 11, Ch. 23, L. 1975; Sec. 92-506, R.C.M. 1947; (2)En. Sec. 9, Ch. 96, L. 1915; re-en. Sec. 2897, R.C.M. 1921; re-en. Sec. 2897, R.C.M. 1935; amd. Sec. 12, Ch. 23, L. 1975; Sec. 92-507, R.C.M. 1947; R.C.M. 1947, 92-506, 92-507; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Beneficiary" defined, 39-71-116.
"Division" defined, 39-71-116.
"Insurer" defined, 39-71-116.
"Employer" defined, 39-71-117.

39-71-725. Payment of burial expense. There shall be paid, in case of the death of an employee, which death is the result of an accidental injury arising out of the employment and happening in the course of the employment, the reasonable burial expenses of the employee, not exceeding $1,400, and such payment is not a part of the compensation which might be paid but is a benefit in addition to and separate and apart from compensation.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 2, Ch. 196, L. 1921; re-en. Sec. 2916, R.C.M. 1921; amd. Sec. 13, Ch. 121, L. 1925; re-en. Sec. 2916, R.C.M. 1935; amd. Sec. 1, Ch. 128, L. 1943; amd. Sec. 1, Ch. 213, L. 1945; amd. Sec. 6, Ch. 38, L. 1953; amd. Sec. 5, Ch. 234, L. 1957; amd. Sec. 1, Ch. 194, L. 1974; R.C.M. 1947, 92-705; amd. Sec. 7, Ch. 21, L. 1981.

Cross-References

"Employee" defined, 39-71-118.
"Injury" or "injured" defined, 39-71-119.

39-71-726. No compensation after death where death not result of injury. If the employee shall die from some cause other than the injury, there shall be no liability for compensation after his death.

History: En. Sec. 12, Ch. 96, L. 1915; re-en. Sec. 2905, R.C.M. 1921; re-en. Sec. 2905, R.C.M. 1935; amd. Sec. 15, Ch. 23, L. 1975; R.C.M. 1947, 92-608(2).

Cross-References

"Employee" defined, 39-71-118.
"Injury" or "injured" defined, 39-71-119.

39-71-727 through 39-71-735 reserved.

39-71-736. Compensation — from what date paid. (1) (a) No compensation may be paid for the first 48 hours or 6 days' loss of wages, whichever is less, that the claimant is totally disabled and unable to work due to an injury. A claimant is eligible for compensation starting with the 7th day.

(b) However, separate benefits of medical and hospital services must be furnished from the date of injury.

(2) For the purpose of this section, an injured worker is not considered to be entitled to compensation benefits if the worker is receiving sick leave benefits, except that each day for which the worker elects to receive sick leave counts 1 day toward the 6-day waiting period.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 4, Ch. 196, L. 1921; re-en. Sec. 2918, R.C.M. 1921; amd. Sec. 3, Ch. 177, L. 1929; re-en. Sec. 2918, R.C.M. 1935; amd. Sec. 3, Ch. 213, L. 1945; amd. Sec. 5, Ch. 7, L. 1949; amd. Sec. 1, Ch. 144, L. 1969; amd. Sec. 18, Ch. 23, L. 1975;

amd. Sec. 45, Ch. 535, L. 1975; R.C.M. 1947, 92-707; amd. Sec. 9, Ch. 103, L. 1979; amd. Sec. 30, Ch. 464, L. 1987; amd. Sec. 6, Ch. 333, L. 1989.

Compiler's Comments

1989 Amendment: In (1), in first sentence, substituted "No compensation may be paid for the first 48 hours or 6 days' loss of wages, whichever is less, that the claimant is totally disabled and unable to work due to an injury" for "No compensation may be paid for the first 6 days' loss of wages due to an injury" and at end of second sentence deleted "of wage loss"; in middle of (2), after "is not considered to", substituted "be entitled to compensation benefits" for "have a wage loss"; and made minor changes in phraseology. Amendment effective July 1, 1989.

Cross-References

"Wages" defined, 39-71-116.

"Injury" or "injured" defined, 39-71-119.

39-71-737. Compensation to run consecutively — exceptions. Compensation shall run consecutively and not concurrently, and payment shall not be made for two classes of disability over the same period except that impairment awards and auxiliary rehabilitation benefits may be paid concurrently with other classes of benefits, and wage supplement and partial rehabilitation benefits may be paid concurrently.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2919, R.C.M. 1921; amd. Sec. 15, Ch. 121, L. 1925; re-en. Sec. 2919, R.C.M. 1935; amd. Sec. 4, Ch. 213, L. 1945; amd. Sec. 7, Ch. 235, L. 1947; amd. Sec. 7, Ch. 253, L. 1955; amd. Sec. 1, Ch. 205, L. 1973; amd. Sec. 3, Ch. 269, L. 1974; R.C.M. 1947, 92-708(part); amd. Sec. 2, Ch. 374, L. 1985; amd. Sec. 1, Ch. 502, L. 1985; amd. Sec. 31, Ch. 464, L. 1987.

39-71-738. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2923, R.C.M. 1921; amd. Sec. 5, Ch. 177, L. 1929; re-en. Sec. 2923, R.C.M. 1935; R.C.M. 1947, 92-712; amd. Sec. 68, Ch. 397, L. 1979.

39-71-739. Compensation in case of changes in degree of injury. If aggravation, diminution, or termination of disability takes place or is discovered after the rate of compensation is established or compensation is terminated in any case where the maximum payments for disabilities as provided in this chapter are not reached, adjustments may be made to meet such changed conditions by increasing, diminishing, or terminating compensation payments in accordance with the provisions of this chapter.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2924, R.C.M. 1921; amd. Sec. 6, Ch. 177, L. 1929; re-en. Sec. 2924, R.C.M. 1935; R.C.M. 1947, 92-713; amd. Sec. 69, Ch. 397, L. 1979.

39-71-740. Payments — how made in most cases. All payments of compensation as provided in this chapter shall be made at the end of each 2-week period, except as otherwise provided herein.

History: En. Sec. 16, Ch. 96, L. 1915; re-en. Sec. 2925, R.C.M. 1921; re-en. Sec. 2925, R.C.M. 1935; amd. Sec. 9, Ch. 235, L. 1947; amd. Sec. 1, Ch. 197, L. 1961; R.C.M. 1947, 92-714.

39-71-741. Compromise settlements, lump-sum payments, and lump-sum advance payments. (1) (a) Benefits may be converted in whole to a lump sum:

(i) if a claimant and an insurer dispute the initial compensability of an injury; and

(ii) if the claimant and insurer agree to a settlement.

(b) The agreement is subject to department approval. The department may disapprove an agreement under this section only if there is not a reasonable dispute over compensability.

(c) Upon approval, the agreement constitutes a compromise and release settlement and may not be reopened by the department or by any court.

(d) The parties' failure to reach an agreement is not a dispute over which a mediator or the workers' compensation court has jurisdiction.

(2) (a) If an insurer has accepted initial liability for an injury, permanent total and permanent partial wage supplement benefits may be converted in whole to a lump-sum payment.

(b) The conversion may be made only upon agreement between a claimant and an insurer.

(c) The agreement is subject to department approval. The department may approve an agreement if:

(i) there is a reasonable dispute concerning the amount of the insurer's future liability or benefits; or

(ii) the amount of the insurer's projected liability is reasonably certain and the settlement amount is not substantially less than the present value of the insurer's liability.

(d) The parties' failure to reach agreement is not a dispute over which a mediator or the workers' compensation court has jurisdiction.

(e) Upon approval, the agreement constitutes a compromise and release settlement and may not be reopened by the department or by any court.

(3) (a) Permanent partial wage supplement benefits may be converted in part to a lump-sum advance.

(b) The conversion may be made only upon agreement between a claimant and an insurer.

(c) The agreement is subject to department approval. The department may approve an agreement if the parties demonstrate that the claimant has financial need that:

(i) relates to the necessities of life or relates to an accumulation of debt incurred prior to injury; and

(ii) arises subsequent to the date of injury or arises because of reduced income as a result of the injury.

(d) The parties' failure to reach an agreement is not a dispute over which a mediator or the workers' compensation court has jurisdiction.

(4) Permanent total disability benefits may be converted to a lump-sum advance. The total of all lump-sum advance payments to a claimant may not exceed $20,000. A conversion may be made only upon the written application of the injured worker with the concurrence of the insurer. Approval of the lump-sum advance payment rests in the discretion of the department. The approval or award of a lump-sum advance payment by the department or court must be the exception. It may be given only if the worker has demonstrated financial need that:

(a) relates to:

(i) the necessities of life;

(ii) an accumulation of debt incurred prior to the injury; or

(iii) a self-employment venture as set forth in 39-71-1026; and

(b) arises subsequent to the date of injury or arises because of reduced income as a result of the injury.

(5) (a) An insurer may recoup any lump-sum advance amortized at the rate established by the department, prorated biweekly over the projected duration of the compensation period.

(b) The rate adopted by the department must be based on the average rate for United States 10-year treasury bills in the previous calendar year, rounded to the nearest whole number.

(c) If the projected compensation period is the claimant's lifetime, the life expectancy must be determined by using the most recent table of life expectancy as published by the United States national center for health statistics.

(6) The department has full power, authority, and jurisdiction to allow, approve, or condition compromise settlements or lump-sum advances agreed to by workers and insurers. All such compromise settlements and lump-sum payments are void without the approval of the department. Approval by the department must be in writing. The department shall directly notify a claimant of a department order approving or denying a claimant's compromise or lump-sum payment.

(7) Subject to 39-71-2401, a dispute between a claimant and an insurer regarding the conversion of biweekly payments into a lump-sum advance under subsection (4) is considered a dispute, for which a mediator and the workers' compensation court have jurisdiction to make a determination. If an insurer and a claimant agree to a compromise and release settlement or a lump-sum advance but the department disapproves the agreement, the parties may request the workers' compensation court to review the department's decision.

History: En. Sec. 16, Ch. 96, L. 1915; amd. Sec. 9, Ch. 100, L. 1919; re-en. Sec. 2926, R.C.M. 1921; re-en. Sec. 2926, R.C.M. 1935; amd. Sec. 1, Ch. 225, L. 1951; amd. Sec. 8, Ch. 234, L. 1957; amd. Sec. 2, Ch. 197, L. 1961; amd. Sec. 1, Ch. 9, L. 1975; amd. Sec. 1, Ch. 11, L. 1975; amd. Sec. 19, Ch. 23, L. 1975; R.C.M. 1947, 92-715; amd. Sec. 3, Ch. 63, L. 1979; amd. Sec. 1, Ch. 471, L. 1985; amd. Sec. 32, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Beneficiary" defined, 39-71-116.
"Division" defined, 39-71-116.
"Insurer" defined, 39-71-116.
"Order" defined, 39-71-116.

39-71-742. Who may receive payment. (1) Where payment is due to a child under 18 years of age or to a person adjudged incompetent, the same shall be made to the parent or to the duly appointed guardian, as the case may be, and the written receipt of such parent or guardian shall acquit the employer, the insurer, or department, as the case may be, of further liability.

(2) In other cases, payment shall be made to the person entitled thereto or to his duly authorized representative.

History: En. Sec. 9, Ch, 96, L. 1915; re-en. Sec. 2898, R.C.M. 1921; amd. Sec. 8, Ch. 121, L. 1925; re-en. Sec. 2898, R.C.M. 1935; amd. Sec. 13, Ch. 23, L. 1975; R.C.M. 1947, 92-508; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Child" defined, 39-71-116.
"Division" defined, 39-71-116.
"Insurer" defined, 39-71-116.
"Employer" defined, 39-71-118.

39-71-743. Assignment or attachment of payments. (1) No payments under this chapter shall be assignable, subject to attachment or garnishment, or be held liable in any way for debts, except:

(a) as provided in 71-3-1118; or

(b) a portion of any lump-sum award or periodic payment to pay a monetary obligation for current or past-due child support, subject to the limitations in subsection (2), whenever the support obligation is established by order of a court of competent jurisdiction or by order rendered in an administrative process authorized by state law.

(2) Payments under this chapter are subject to assignment, attachment, or garnishment for child support as follows:

(a) for any periodic payment, an amount up to the percentage amount established in the guidelines promulgated by the department of social and rehabilitation services pursuant to 40-5-209; or

(b) for any lump-sum award, an amount up to that portion of the award that is approved for payment on the basis of a past-due child support obligation.

(3) After determination that the claim is covered under the Workers' Compensation Act or Occupational Disease Act of Montana, the liability for payment of the claim is the responsibility of the appropriate workers' compensation insurer. No fee or charge shall be payable by the injured worker for treatment of injuries sustained if liability is accepted by the insurer.

History: En. Sec. 17, Ch. 96, L. 1915; re-en. Sec. 2927, R.C.M. 1921; re-en. Sec. 2927, R.C.M. 1935; R.C.M. 1947, 92-801; amd. Sec. 3, Ch. 496, L. 1983; amd. Sec. 1, Ch. 485, L. 1987; amd. Sec. 19, Ch. 702, L. 1989.

Compiler's Comments

1989 Amendment: In (2)(a), after "promulgated", substituted reference to Department of Social and Rehabilitation Services for "in supreme court Order No. 86-223, dated January 13, 1987". Amendment effective July 1, 1989.

Applicability: Section 32, Ch. 702, L. 1989, provided: "[This act] applies to child support orders and modifications of child support orders issued after September 30, 1989."

39-71-744. Benefits not due while claimant is incarcerated. A claimant is not eligible for any disability or rehabilitation compensation benefits while the claimant is incarcerated as the result of conviction of a felony. The insurer remains liable for medical benefits. No time limit on benefits otherwise provided in this chapter is extended due to a period of incarceration.

History: En. Sec. 28, Ch. 464, L. 1987.

Part 8

Compensation for Occupational Deafness

39-71-801. Occupational deafness compensated as provided in part. Regardless of other definitions of injury and time limitations imposed by this chapter, compensation is awarded for occupational deafness as provided in this part.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(part); amd. Sec. 70, Ch. 397, L. 1979.

Cross-References

"Injury" defined, 39-71-119.

39-71-802. Definitions. (1) "Occupational deafness" means permanent partial or permanent total loss of hearing of one or both ears due to prolonged exposure to noise in employment.

(2) "Noise" means sound capable of producing occupational deafness.

(3) "Noisy employment" means employment in the performance of which an employee is subjected to noise.

History: **En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(part).**

Cross-References

"Employee" defined, 39-71-118.

39-71-803. Occupational deafness distinguished from traumatic loss of hearing. Occupational deafness as herein provided is distinguished from traumatic loss of hearing, which may be compensated under parts 7 and 10 of this chapter.

History: **En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(8); amd. Sec. 33, Ch. 464, L. 1987.**

Cross-References

"Occupational deafness" defined, 39-71-802.

39-71-804. Compensable loss of hearing confined to certain frequencies. Losses of hearing due to industrial noise for compensation purposes shall be confined to the frequencies of 500, 1,000, and 2,000 cycles per second. Loss of hearing ability for frequency tones above 2,000 cycles per second is not to be considered as constituting disability for hearing.

History: **En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(1)(a).**

Cross-References

"Noise" defined, 39-71-802.

39-71-805. Determining percent of hearing loss. (1) The percent of hearing loss, for purposes of the determination of compensation claims for occupational deafness, shall be calculated as the average in decibels of the thresholds of hearing for the frequencies of 500, 1,000, and 2,000 cycles per second. Pure tone air conduction audiometric instruments, approved by nationally recognized authorities in this field, shall be used for measuring hearing loss. If the losses of hearing average 25 decibels or less in the three frequencies, as measured under ISO Standard 1964, such losses of hearing shall not then constitute any compensable hearing disability. If the losses of hearing average 92 decibels or more in the three frequencies, as measured under ISO Standard 1964, then the same shall constitute and be total or 100% compensable hearing loss.

(2) In measuring hearing impairment, the lowest measured losses in each of the three frequencies shall be added together and divided by three to determine the average decibel loss. For every decibel of loss exceeding 25 decibels, an allowance of 1 ½% shall be made up to the maximum of 100%, which is reached at 92 decibels.

(3) In determining the binaural percentage of loss, the percentage of impairment in the better ear shall be multiplied by five. The resulting figure shall be added to the percentage of impairment in the poorer ear and the sum of the two divided by six. The final percentage shall be representative of the binaural hearing impairment.

(4) Before determining the percentage of hearing impairment, in order to allow for the average amount of hearing loss from nonoccupational causes

found in the population at any given age, there shall be deducted from the total average decibel loss one-half decibel for each year of the employee's age over 40 at the time of last exposure to industrial noise.

(5) No consideration shall be given to the question of whether or not the ability of an employee to understand speech is improved by the use of a hearing aid.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(1)(b) thru (f).

Cross-References
"Order" defined, 39-71-116.
"Year" defined, 39-71-116.
"Employee" defined, 39-71-118.
"Noise" defined, 39-71-802.
"Occupational deafness" defined, 39-71-802.

39-71-806. Disability payments not payable for temporary hearing loss due to prolonged exposure to noise. No benefits shall be payable for temporary total or temporary partial disability under this part for loss of hearing due to prolonged exposure to noise.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(2).

Cross-References
"Noise" defined, 39-71-802.

39-71-807. Compensation for wage loss where employee transferred due to occupational deafness. An employee who because of occupational deafness is transferred by his employer to other employment and thereby sustains actual wage loss must be compensated at the rate provided in 39-71-703, not exceeding $3,500 in the aggregate from all employers. "Time of injury", "incurred such injury", or "date of injury" in such case is the date of wage loss.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(3); amd. Sec. 71, Ch. 397, L. 1979.

Cross-References
"Employer" defined, 39-71-117.
"Employee" defined, 39-71-118.
"Injury" or "injured" defined, 39-71-119.
"Occupational deafness" defined, 39-71-802.

39-71-808. Compensation for occupational deafness. (1) Subject to the limitations herein contained, there shall be payable:

(a) for total occupational deafness of one ear, 40 weeks of compensation;

(b) for total occupational deafness of both ears, 200 weeks of compensation; and

(c) for partial occupational deafness, compensation shall bear such relation to that named herein as disabilities bear to the maximum disabilities herein provided.

(2) In cases covered by this section, "time of injury", "incurred such injury", or "date of injury" shall be exclusively the date of occurrence of any of the following events to an employee:

(a) transfer because of occupational deafness to nonnoisy employment by an employer whose employment has caused occupational deafness;

(b) retirement;

(c) termination of the employer-employee relationship;

(d) layoff provided the layoff is complete and continuous for 1 year.

(3) No claim under this section shall be filed, however, until 6 consecutive months of removal from noisy employment after the time of injury, except,

that under subsection (2)(d), such 6 consecutive months period may commence within the last 6 months of layoff.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(4).

Cross-References

"Employer" defined, 39-71-117.
"Employee" defined, 39-71-118.
"Injury" or "injured" defined, 38-71-119.
"Noisy employment" defined, 39-71-802.
"Occupational deafness" defined, 39-71-802.

39-71-809. Liability of employer for occupational deafness. An employer shall become liable for the entire occupational deafness to which his employment has contributed; but if previous deafness is established by hearing test or other competent evidence, whether or not the employee was exposed to noise within the 6 months preceding such test, he shall not be liable for previous loss so established nor shall he be liable for any loss for which compensation has previously been paid or awarded.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(9).

Cross-References

"Employer" defined, 39-71-117.
"Employee" defined, 39-71-118.
"Noise" defined, 39-71-802.
"Occupational deafness" defined, 39-71-802.

39-71-810. Employee to have worked ninety days for employer from whom compensation claimed. No payment shall be made to an employee under this part unless he shall have worked in noisy employment for a total period of at least 90 days for the employer from whom he claims compensation.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(6).

Cross-References

"Employer" defined, 39-71-117.
"Employee" defined, 39-71-118.
"Noisy employment" defined, 39-71-802.

39-71-811. Minimum exposure and noise intensity level required. No claim shall be filed, however, unless the employee is exposed 8 hours daily and for a period of at least 90 days as above required to noise intensity levels above 90 decibels.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(10).

Cross-References

"Employee" defined, 39-71-118.
"Noise" defined, 39-71-802.

39-71-812. Limitation on amount of compensation payable to employee under part. Any amount paid to an employee under this part by an employer shall be credited against compensation payable by any employer to such employee for occupational deafness under 39-71-807 and 39-71-808. No employee shall in the aggregate receive greater compensation from any or all employers for occupational deafness than that provided in this part for total occupational deafness.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(7).

Cross-References

"Employer" defined, 39-71-117.
"Employee" defined, 39-71-118.
"Occupational deafness" defined, 39-71-802.

39-71-813. Limitation provisions applicable — when provisions begin to run. The limitation provisions in this chapter control claims arising under this part. Such provisions run from the first date upon which claim may be filed or from the date of subsequent death, provided that no claim may accrue to any dependent unless an award has been issued or liability admitted.

History: En. 92-710 by Sec. 1, Ch. 366, L. 1971; amd. Sec. 1, Ch. 381, L. 1973; R.C.M. 1947, 92-710(5); amd. Sec. 72, Ch. 397, L. 1979.

Part 9

Subsequent Injury Received by Vocationally Handicapped

39-71-901. Definitions. As used in this part, the following definitions apply:

(1) "Vocationally handicapped" means a person who has a medically certifiable permanent impairment which is a substantial obstacle to obtaining employment or to obtaining reemployment if the employee should become unemployed, considering such factors as the person's age, education, training, experience, and employment rejection.

(2) "Certificate" means documentation issued by the department to an individual who is vocationally handicapped.

(3) "Fund" means the subsequent injury fund.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(1); amd. Sec. 10, Ch. 103, L. 1979; amd. Sec. 73, Ch. 397, L. 1979; amd. Sec. 24, Ch. 613, L. 1989.

Compiler's Comments

1989 Amendment: In definition of certificate changed "division of workers' compensation" to "department". Amendment effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

39-71-902. Fund to receive payment from insurer for each death under chapter — assessment of insurers. (1) In every case of the death of an employee under this chapter, the insurer shall pay to the fund the sum of $1,000. In addition, the department may assess every insurer an amount not to exceed 5% of the compensation paid in Montana in the preceding fiscal year. The assessment must be transmitted annually to the subsequent injury fund by the employer or insurer.

(2) When, in the judgment of the department, the amount of money in the subsequent injury fund is such that there is a surplus above and beyond projected liabilities, the department may at its discretion suspend or reduce further collection of assessments for a period of time determined by the department.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part); amd. Sec. 74, Ch. 397, L. 1979; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Section 64, Ch. 613, L. 1989, provided that in this section the Code Commissioner is directed to change the term "administrator" or "his" to "department", meaning the Department of Labor and Industry.

Cross-References

"Division" defined, 39-71-116.

"Insurer" defined, 39-71-116.

"Employer" defined, 39-71-117.

"Employee" defined, 39-71-118.

"Fund" defined, 39-71-901.

39-71-903. Procedure and practice. When a vocationally handicapped person receives a personal injury, the procedure and practice provided in this chapter applies to all proceedings under this part, except where specifically otherwise provided herein.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part); amd. Sec. 75, Ch. 397, L. 1979.

Cross-References

"Vocationally handicapped" defined, 39-71-901.

39-71-904. Rules for certification. The department shall promulgate rules for certification of vocationally handicapped persons.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(4); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Section 64, Ch. 613, L. 1989, provided that in this section the Code Commissioner is directed to change the term "administrator" or "his" to "department", meaning the Department of Labor and Industry.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

"Division" defined, 39-71-116.

"Vocationally handicapped" defined, 39-71-901.

39-71-905. Certification as vocationally handicapped. A person who wishes to be certified as vocationally handicapped for purposes of this part shall apply to the department on forms furnished by the department. The department shall conduct an investigation and shall issue a certificate to a person who, in the department's discretion, meets the requirements for vocationally handicapped certification. An employee who is requesting reemployment may be certified as vocationally handicapped. An employee who is not employed at the time of application for certification must be certified as vocationally handicapped before entering new employment in order for the new employer to receive the benefits of this part.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(2); amd. Sec. 11, Ch. 103, L. 1979; amd. Sec. 1, Ch. 151, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Division" defined, 39-71-116.

"Employer" defined, 39-71-117.

"Employee" defined, 39-71-118.

"Certificate" defined, 39-71-901.

"Vocationally handicapped" defined, 39-71-901.

39-71-906. Employer hiring or retaining certified vocationally handicapped person to file information with department — effect of

failure to file. Upon commencement of employment or retention in employment of a certified vocationally handicapped person, the employer shall submit to the department, on forms furnished by the department, all pertinent information requested by the department. The department shall acknowledge receipt of the information. Failure to file the required information with the department within 60 days after the first day of the vocationally handicapped person's employment or retention in employment precludes the employer from the protection and benefits of this part unless the information is filed before an injury for which benefits are payable under this part.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(3); amd. Sec. 12, Ch. 103, L. 1979; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

Government employment preference for the handicapped, Title 39, ch. 30.

"Division" defined, 39-71-116.

"Employer" defined, 39-71-117.

"Injury" or "injured" defined, 39-71-119.

"Vocationally handicapped" defined, 39-71-901.

39-71-907. Certified vocationally handicapped person to be compensated for injury as provided by chapter — insurer liability for compensation limited. A person certified as vocationally handicapped who receives a personal injury arising out of and in the course of his employment and resulting in death or disability must be paid compensation in the manner and to the extent provided in this chapter or, in case of his death resulting from such injury, the compensation must be paid to his beneficiaries or dependents. The liability of the insurer for payment of medical and burial benefits as provided in this chapter is limited to those benefits arising from services rendered during the period of 104 weeks after the date of injury. The liability of the insurer for payment of benefits as provided in this chapter is limited to 104 weeks of compensation benefits actually paid. Thereafter, all compensation and the cost of all medical care and burial is the liability of the fund.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(5); amd. Sec. 76, Ch. 397, L. 1979; amd. Sec. 1, Ch. 213, L. 1987.

Cross-References

"Employer" defined, 39-71-117.

"Injury" or "injured" defined, 39-71-119.

"Vocationally handicapped" defined, 39-71-901.

39-71-908. Notification of fund of its potential liability under part — review by fund. Not less than 90 or more than 150 days before the expiration of 104 weeks after the date of injury, the insurer shall notify the fund whether it is likely that compensation may be payable beyond a period of 104 weeks after the date of the injury. The fund thereafter may review, at reasonable times, such information as the insurer has regarding the accident and the nature and extent of the injury and disability.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part); amd. Sec. 77, Ch. 397, L. 1979; amd. Sec. 25, Ch. 613, L. 1989.

Compiler's Comments

1989 Amendment: In two places substituted "insurer" for "employer, carrier, or the industrial insurance fund"; and made minor change in phraseology. Amendment effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

Cross-References

"Employer" defined, 39-71-117.
"Injury" or "injured" defined, 39-71-119.
"Fund" defined, 39-71-901.

39-71-909. Effect of fund's failure to give notification of its intent to dispute liability — subsequent notification by fund authorized. If the fund does not notify the insurer of its intent to dispute the payment of compensation, medical, and burial benefits, the insurer shall continue to make payments on behalf of the fund and shall be reimbursed by the fund for all benefits paid in excess of the insurer's liability. However, at any time subsequent to 104 weeks after the date of injury, the fund may notify the insurer of a dispute as to payment of benefits. The liability of the fund to reimburse the insurer shall be suspended 30 days thereafter until the controversy is determined.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(7); amd. Sec. 2, Ch. 213, L. 1987.

Cross-References

"Employer" defined, 39-71-117.
"Injury" or "injured" defined, 39-71-119.
"Fund" defined, 39-71-901.

39-71-910. Procedure for resolving disputes as to liability under part. (1) If an employee was employed or retained in employment under the provisions of this part and a dispute or controversy arises as to payment of benefits or the liability therefor, the department shall hold a hearing and resolve all disputes. On motion made in writing by the insurer, the department shall join the fund as a party defendant.

(2) The department, within 5 days of the entry of an order joining the fund as a party defendant, shall give the fund written notice thereof not less than 20 days before the date of hearing and shall include the names of the employee and the insurer and the date of the alleged injury or disability. The fund named as a defendant has 10 days after the date of notification to file objections to being named as a party defendant. On the date of the hearing at which the liability of the parties is determined, the hearing examiner first shall hear arguments and take evidence concerning the joinder as party defendant. If the fund has filed timely objection and if argument and evidence warrant, the hearing examiner shall grant a motion to dismiss.

(3) At the time of the hearing, the insurer and fund may appear, cross-examine witnesses, give evidence, and defend both on the issue of liability of the insurer to the employee and on the issue of the liability of the fund.

(4) The hearing examiner shall make findings of fact and conclusions of law determining the respective liability of the insurer and the fund.

History: En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(9) thru (12); amd. Sec. 78, Ch. 397, L. 1979; amd. Secs. 26, 64, Ch. 613, L. 1989.

Compiler's Comments

1989 Amendment: In two places changed "division" to "department"; in five places changed "employer, carrier, or industrial insurance fund" and "employer" to "insurer"; and made minor changes in phraseology. Amendment effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in this section the Code Commissioner is directed to change the term "administrator" or "his" to "department", meaning the Department of Labor and Industry.

Cross-References

"Division" defined, 39-71-116.
"Order" defined, 39-71-116.

"Employer" defined, 39-71-117.
"Employee" defined, 39-71-118.
"Injury" or "injured" defined, 39-71-119.
"Fund" defined, 39-71-901.

39-71-911. Obligation to make payments on behalf of fund not an independent liability. The obligation imposed by this part on the insurer to make payments on behalf of the fund does not impose an independent liability on the insurer.

History: **En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part); amd. Sec. 27, Ch. 613, L. 1989.**

Compiler's Comments

1989 Amendment: In two places changed "employer, carrier, or industrial insurance fund" to "insurer". Amendment effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

Cross-References

"Employer" defined, 39-71-117.
"Fund" defined, 39-71-901.

39-71-912. Reimbursement to be promptly made. After the right to reimbursement has been established, reimbursement payment shall be made promptly on a proper showing every 6 months.

History: **En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part).**

39-71-913. Payments by fund directly to persons entitled. If the insurer does not make the payments on behalf of the fund, the fund may make the payments directly to the persons entitled to the payments.

History: **En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part); amd. Sec. 28, Ch. 613, L. 1989.**

Compiler's Comments

1989 Amendment: Changed "employer, carrier, or the industrial insurance fund" to "insurer". Amendment effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

Cross-References

"Employer" defined, 39-71-117.
"Fund" defined, 39-71-901.

39-71-914. Repealed. Sec. 68, Ch. 464, L. 1987.

History: **En. 92-709.1 by Sec. 1, Ch. 254, L. 1973; R.C.M. 1947, 92-709.1(part).**

Part 10

Referral of Disabled Workers for Vocational Rehabilitation

39-71-1001. Repealed. Sec. 68, Ch. 464, L. 1987.

History: **En. Sec. 1, Ch. 21, L. 1961; amd. Sec. 1, Ch. 221, L. 1963; amd. Sec. 83, Ch. 23, L. 1975; R.C.M. 1947, 92-1401; amd. Sec. 79, Ch. 397, L. 1979.**

39-71-1002. Repealed. Sec. 68, Ch. 464, L. 1987.

History: **En. Sec. 2, Ch. 21, L. 1961; amd. Sec. 84, Ch. 23, L. 1975; R.C.M. 1947, 92-1402.**

39-71-1003. Eligibility for vocational rehabilitation expenses. Upon certification by the department of social and rehabilitation services, a disabled worker may be paid vocational rehabilitation expenses from funds provided in 39-71-1004, in addition to benefits payable under the Workers' Compensation Act.

History: **En. Sec. 3, Ch. 21, L. 1961; amd. Sec. 1, Ch. 363, L. 1971; R.C.M. 1947, 92-1403; amd. Sec. 80, Ch. 397, L. 1979; amd. Sec. 3, Ch. 374, L. 1985; amd. Sec. 35, Ch. 464, L. 1987.**

39-71-1004. Industrial accident rehabilitation account. (1) The payments provided in 39-71-1003 shall be made from the industrial accident rehabilitation account in the state special revenue fund. Payments to the account shall be made on or before July 1 of each year as follows:

(a) by each employer operating under the provisions of plan No. 1 of the Workers' Compensation Act, an amount to be assessed by the department, not exceeding 1% of the compensation paid to the employer's injured employees in Montana for the preceding fiscal year;

(b) by each insurer insuring employers under the provisions of plan No. 2 of the Workers' Compensation Act, an amount to be assessed by the department, not exceeding 1% of the compensation paid to injured employees of its insured in Montana during the preceding fiscal year;

(c) by the department, an amount to be determined by the department, not exceeding 1% of the compensation paid to injured employees in Montana from the industrial insurance expendable trust fund and the occupational disease expendable trust fund for the preceding fiscal year.

(2) Separate accounts of the amounts collected and disbursements made from the industrial accident rehabilitation account in the state special revenue fund shall be kept for each of the plans. If in any fiscal year the amount collected from the employers under any plan exceeds the amount of payments for employees of the employers under such plan, the assessment against the employers under such plan for the following year shall be reduced.

(3) The payments herein provided for shall be made to the department, which shall credit the sums paid to the industrial accident rehabilitation account which shall be in the custody of the state treasurer. Disbursements from the account shall be made after approval by the department of social and rehabilitation services and upon audit and approval by the department of administration.

(4) No part of the funds allocated or contributed as herein provided and contemplated shall be used in payment of administrative expenses of the department or department of social and rehabilitation services.

History: En. Sec. 7, Ch. 21, L. 1961; amd. Sec. 3, Ch. 221, L. 1963; amd. Sec. 85, Ch. 23, L. 1975; R.C.M. 1947, 92-1406; amd. Sec. 2, Ch. 283, L. 1983; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Division" defined, 39-71-116.
"Insurer" defined, 39-71-116.
"Year" defined, 39-71-116.

39-71-1005. Repealed. Sec. 68, Ch. 464, L. 1987.

History: En. Sec. 1, Ch. 123, L. 1979.

39-71-1006 through 39-71-1010 reserved.

39-71-1011. Definitions. As used in this chapter, the following definitions apply:

(1) "Board of rehabilitation certification" means the nonprofit, independent, fee-structured organization that is a member of the national commission for health certifying agencies and that is established to certify rehabilitation practitioners.

(2) "Disabled worker" means one who has a medically determined restriction resulting from a work-related injury that precludes the worker from returning to the job the worker held at the time of the injury.

(3) "I.W.R.P." means an individualized, written rehabilitation program prepared by the department of social and rehabilitation services.

(4) "Rehabilitation benefits" means benefits provided in 39-71-1003 and 39-71-1023 through 39-71-1025.

(5) "Rehabilitation provider" means a rehabilitation counselor, other than the department of social and rehabilitation services, certified by the board for rehabilitation certification and designated by the insurer to the department.

(6) "Rehabilitation services" consists of a program of evaluation, planning, and delivery of goods and services to assist a disabled worker to return to work.

(7) (a) "Worker's job pool" means those jobs typically available for which a worker is qualified, consistent with the worker's age, education, vocational experience and aptitude and compatible with the worker's physical capacities and limitations as the result of the worker's injury. Lack of immediate job openings is not a factor to be considered.

(b) A worker's job pool may be either local or statewide, as follows:

(i) a local job pool is the job service office area that includes the worker's residence; and

(ii) the statewide job pool is the state of Montana.

History: **En. Sec. 34, Ch. 464, L. 1987; amd. Sec. 2, Ch. 333, L. 1989; amd. Sec. 64, Ch. 613, L. 1989.**

Compiler's Comments

1989 Amendment: Chapter 333 in definition of worker's job pool, in (b)(i), substituted "a local job pool is the job service office area that includes the worker's residence" for former language that read: "a local job is one either in a central city that has within its economically integrated geographical area a population of less than 50,000 or in a city with a population of more than 50,000 as determined by the division" and in (b)(ii) substituted "the statewide job pool is the state of Montana" for "a statewide job is one anywhere in the state of Montana". Amendment effective July 1, 1989.

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

39-71-1012. Rehabilitation goal and options. (1) The goal of rehabilitation services is to return a disabled worker to work, with a minimum of retraining, as soon as possible after an injury occurs.

(2) The first appropriate option among the following must be chosen for the worker:

(a) return to the same position;

(b) return to a modified position;

(c) return to a related occupation suited to the claimant's education and marketable skills;

(d) on-the-job training;

(e) short-term retraining program (less than 24 months);

(f) long-term retraining program (48 months maximum); or

(g) self-employment.

(3) Whenever possible, employment in a worker's local job pool must be considered and selected prior to consideration of employment in a worker's statewide job pool.

History: **En. Sec. 36, Ch. 464, L. 1987.**

39-71-1013. Agreement between worker and insurer regarding option. A worker and an insurer may agree that an option in 39-71-1012 is appropriate without following the procedures provided in this part. Failure to reach agreement is not a dispute under 39-71-2401.

History: **En. Sec. 43, Ch. 464, L. 1987.**

39-71-1014. Rehabilitation services — required and provided by insurers and the department of social and rehabilitation services. (1) Rehabilitation services are required for disabled workers and may be initiated by:

(a) an insurer by designating a rehabilitation provider and notifying the department;

(b) the department by requiring the insurer to designate a rehabilitation provider; or

(c) a disabled worker through a request to the department. The department shall then require the insurer to designate a rehabilitation provider.

(2) Rehabilitation services provided under this part must be delivered:

(a) through a rehabilitation counselor certified by the board of rehabilitation certification;

(b) by a vocational rehabilitation counselor employed by the department of social and rehabilitation services; or

(c) by both.

(3) A disabled worker served by the department of social and rehabilitation services may receive only those vocational rehabilitation services as provided in Title 53, chapter 7, parts 1 and 2.

History: **En. Sec. 37, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.**

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

39-71-1015. Designated rehabilitation provider — evaluation and report. (1) If a disabled worker is capable of returning to work, the designated rehabilitation provider shall evaluate and determine the return-to-work capabilities of the disabled worker pursuant to 39-71-1012(2)(a) through (2)(d).

(2) If an insurer's designated rehabilitation provider has determined that all appropriate services have been provided to the disabled worker under 39-71-1012(2)(a) through (2)(d) and the worker has returned to work, the insurer shall document that determination to the department.

(3) If the worker has not returned to work as provided in subsection (2), the insurer shall notify the department. The department shall then designate a rehabilitation panel as provided in 39-71-1016 and refer the worker to the panel.

History: **En. Sec. 38, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.**

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

39-71-1016. Rehabilitation panels. (1) The department shall designate and administer rehabilitation panels. The purpose of a panel is to advise the department on a worker's eligibility for rehabilitation services. Each panel shall issue to the department a report as provided in 39-71-1017.

(2) Each panel must be composed of at least:

(a) a representative of the department of social and rehabilitation services;

(b) a representative from the department who has expertise in job service listings, occupational supply and demand in Montana, and other Montana career information; and

(c) a representative from the department, who shall chair the panel.

(3) The department shall pay the cost of the panel.

(4) The insurer shall provide the panel with the worker's medical records, rehabilitation reports, and other pertinent information in its possession.

(5) The panel may consult with the worker, insurer, medical and rehabilitation providers, and any other person and may have access to any information it considers pertinent to carry out its responsibility.

(6) Information received by the panel is confidential, except that it may be disclosed to the worker, insurer, and department.

History: En. Sec. 39, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

39-71-1017. Rehabilitation panel report. (1) The rehabilitation panel shall:

(a) review all records, statements, and other pertinent information; and

(b) prepare a report to the department, with copies to the insurer and worker.

(2) The report must:

(a) identify the first appropriate rehabilitation option by following the priorities set forth in 39-71-1012; and

(b) contain findings of why a higher listed priority, if any, is not appropriate.

(3) Depending on which option the panel identifies as appropriate, the report also must contain findings that:

(a) identify jobs in the local or statewide job pool and the worker's anticipated wages from each job;

(b) describe an appropriate on-the-job training program, the worker's anticipated wages, and anticipated insurer's contribution, if any;

(c) describe an appropriate retraining program, short- or long-term, the employment opportunities anticipated upon the worker's completion of the program, and the worker's anticipated wages; or

(d) describe the worker's potential for specific self-employment, limitations the worker might have in such self-employment and any assistance necessary, and the worker's anticipated wages.

(4) An insurer or a worker on his own motion may submit information to the panel prior to the time the panel issues its final report.

History: En. Sec. 40, Ch. 464, L. 1987; amd. Sec. 9, Ch. 333, L. 1989; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

1989 Amendment: Chapter 333 in (3), in four places, substituted "wages" for "earnings". Amendment effective July 1, 1989.

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

39-71-1018. Department's order of determination — exception — hearing. (1) The department shall issue an initial order of determination within 10 working days of receipt of a report from a rehabilitation panel. If the initial order of determination differs from the findings and recommendations of the panel, the order must state the reasons for the difference.

(2) Within 10 working days from the date the initial order of determination is mailed, a party may submit a written exception to the order. On its own motion or at the request of any party, the department shall conduct a hearing. The department shall issue a final order of determination within 20 working days of the hearing.

(3) If no party submits an exception within 10 working days, the initial order of determination becomes the final order of determination and must be issued by the department.

(4) Within 10 working days after the date of mailing of the department's final order of determination, an appeal may be taken to the workers' compensation court.

History: En. Sec. 41, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

39-71-1019. Referral to department of social and rehabilitation services for retraining — benefits — appeals. (1) If in its final order of determination the department considers a worker able to return to work in the worker's job pool, the insurer is not liable for rehabilitation benefits, even though the worker independently may pursue a training program of the worker's own choice or seek vocational rehabilitation services from the department of social and rehabilitation services.

(2) If in its final order of determination the department finds the worker needs retraining, the department shall determine the maximum duration for which funds under 39-71-1003 may be used for rehabilitation services under 39-71-1012(2)(d) through (2)(f) and shall refer the worker to the department of social and rehabilitation services for a determination of vocational handicap.

(3) If the department of social and rehabilitation services determines that a disabled worker has a vocational handicap, the worker is eligible for funds under 39-71-1003 up to the maximum duration established in the department's final order of determination.

(4) If a disabled worker seeks vocational rehabilitation services from the department of social and rehabilitation services without giving the insurer the opportunity to designate a rehabilitation provider or, subsequently, without giving the department the opportunity to designate a rehabilitation panel to provide a report, the insurer is not liable for rehabilitation benefits. The insurer may terminate rehabilitation and other benefits, if any, being received by the worker by following the procedure set forth in 39-71-1032.

(5) The department of social and rehabilitation services, in providing rehabilitation services to a worker referred to it by the department, shall consider but is not bound by the rehabilitation panel report.

(6) If the department of social and rehabilitation services has determined that all appropriate rehabilitation services have been provided to a disabled worker, the department [of social and rehabilitation services] shall document that determination to the department.

(7) The appeal process before the board of social and rehabilitation appeals provided for in 53-7-106 is the exclusive remedy for a person aggrieved in the receipt of services provided by the department of social and rehabilitation services.

History: **En. Sec. 42, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.**

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

39-71-1020 through 39-71-1022 reserved.

39-71-1023. Total rehabilitation benefits during period of rehabilitation services — limitation — termination. (1) A worker who no longer is temporarily totally disabled but meets the definition of a disabled worker may be eligible for total rehabilitation benefits.

(2) Eligibility for total rehabilitation benefits begins on the date of maximum healing and continues for a period not to exceed 26 weeks after the date notice is given to the department by the insurer that a rehabilitation provider has been designated.

(3) Benefits must be paid at the disabled worker's temporary total disability rate. The department may extend the benefit period for good cause. The insurer may extend the benefit period without department approval but must notify the department of the extension.

(4) Total rehabilitation benefits under this section terminate when:

(a) a worker returns to work;

(b) a worker is qualified to return to work under the priorities in 39-71-1012 pursuant to a department order; or

(c) an I.W.R.P. is submitted to the department by the department of social and rehabilitation services.

(5) The insurer shall provide written notice to the worker and department that benefits have been terminated.

History: **En. Sec. 44, Ch. 464, L. 1987; amd. Sec. 3, Ch. 333, L. 1989; amd. Sec. 64, Ch. 613, L. 1989.**

Compiler's Comments

1989 Amendment: Chapter 333 in (2) substituted language providing that eligibility begins on date of maximum healing and continues for period not to exceed 26 weeks after notice given that provider has been designated for language providing eligibility began on later of date of maximum healing or date notice given that provider has been designated; in (3) deleted language providing that benefits must be paid for period not exceeding 26 weeks from date of eligibility; and made minor changes in phraseology. Amendment effective July 1, 1989.

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

39-71-1024. Wage supplement and partial rehabilitation benefits. (1) A worker who is in a rehabilitation program under 39-71-1019 in accordance with and for the maximum duration established by a final order of determination by the department is eligible to receive the following benefits:

(a) wage supplement benefits as provided in 39-71-703 but with the rate based on 66⅔% of the worker's actual wages received at the time of injury, subject to a maximum of one-half the state's average weekly wage; and

(b) a partial rehabilitation benefit that, together with the wage supplement provided in subsection (1)(a), provides the worker with weekly benefits equal to the worker's temporary total disability rate.

(2) After the worker completes the rehabilitation program, the worker's further eligibility, if any, for wage supplement benefits under 39-71-703 is reduced by the number of weeks of wage supplement benefits received under subsection (1)(a).

(3) Notwithstanding subsection (1)(a), beginning July 1, 1987, through June 30, 1991, the maximum weekly compensation benefit under that subsection may not exceed $149.50, which is one-half the state's weekly wage established July 1, 1986.

History: En. Sec. 45, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 9, Ch. 9, Sp. L. June 1989.

Compiler's Comments

1989 Special Session Amendment: In (3) reimposed benefit freeze that ended June 30, 1989, to continue through June 30, 1991. Amendment effective July 17, 1989.

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

39-71-1025. Auxiliary rehabilitation benefits. In addition to benefits otherwise provided in this chapter, separate benefits not exceeding a total of $4,000 may be paid by the insurer for:

(1) reasonable travel and relocation expenses used to:

(a) search for new employment;

(b) return to work but in a new location; and

(c) implement a rehabilitation program pursuant to a final order of determination by the department; and

(2) reasonable participation with an employer in an on-the-job training program.

History: En. Sec. 46, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

39-71-1026. Self-employment — criteria. (1) A worker who is eligible for permanent total disability benefits may be eligible for a self-employment venture. A lump sum of $20,000 or less of permanent total disability benefits may be granted under 39-71-741 to assist the worker in the self-employment venture. Any previous lump-sum advance made under 39-71-741(4) must be considered so that the total amount of lump-sum payments of permanent total disability benefits does not exceed $20,000.

(2) In addition to meeting the requirements set forth in 39-71-741, the self-employment venture must be considered feasible under criteria set forth by the department.

(3) When the worker begins the self-employment venture, his eligibility for permanent total disability benefits ends but the worker may be eligible for permanent partial disability benefits under 39-71-703.

(4) If a worker again becomes eligible for permanent total disability benefits, the insurer may recoup any lump sum of permanent total disability benefits awarded for a self-employment venture, as provided in 39-71-741.

History: En. Sec. 47, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

39-71-1027 through 39-71-1030 reserved.

39-71-1031. Exchange of information. The department of social and rehabilitation services, the insurer's designated rehabilitation provider, and the department shall provide to one another case information as necessary to carry out the purposes of this part.

History: En. Sec. 48, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

39-71-1032. Termination of benefits for noncooperation with rehabilitation provider or the department of social and rehabilitation services — department hearing and appeal. (1) If an insurer believes a worker is refusing unreasonably to cooperate with the rehabilitation provider or the department of social and rehabilitation services, the insurer, with 14 days' notice to the worker and department on a form approved by the department, may terminate any rehabilitation benefits the worker is receiving under this part until the worker cooperates. If the worker is receiving wage supplement benefits, those benefits must continue until the department's determination under subsection (3) is made.

(2) The worker may contest the insurer's termination of benefits by filing a written exception to the department within 10 working days after the date of the 14-day notice. The worker or insurer may request a hearing or the department may hold a hearing on its own motion. The department shall issue an order within 30 days of the hearing.

(3) If no exceptions are timely filed or the department determines the worker unreasonably refused to cooperate, the insurer may terminate wage loss supplement benefits the worker is receiving until the worker cooperates with the rehabilitation provider. If the worker prevails at a hearing before the department, it may award attorney fees and costs to the worker under 39-71-612.

(4) Within 10 working days after the department mails its order to the party's last-known address, a party may appeal to the workers' compensation court.

History: **En. Sec. 49, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.**

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

39-71-1033. Department jurisdiction over rehabilitation disputes — appeals. In addition to pursuing the hearing opportunities provided in 39-71-1018 and 39-71-1032, a party may bring a dispute arising under the provisions of this part, except for a dispute over which the department of social and rehabilitation services has jurisdiction under 39-71-1019, before the department under the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, and any rules promulgated by the department. Within 10 days after mailing of the department's final order, an interested party may appeal to the workers' compensation court.

History: **En. Sec. 50, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.**

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Parts 11 through 20 reserved

Part 21

Compensation Plan Number One

39-71-2101. General requirements for electing coverage under plan. An employer may elect to be bound by compensation plan No. 1 upon furnishing satisfactory proof to the department of his solvency and financial ability to pay the compensation and benefits in this chapter provided for and to discharge all liabilities which are reasonably likely to be incurred by him during the fiscal year for which such election is effective and may, by order of the department, make such payments directly to his employees as they may become entitled to receive under the terms and conditions of this chapter.

History: **En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2970, R.C.M. 1921; re-en. Sec. 2970, R.C.M. 1935; amd. Sec. 2, Ch. 443, L. 1973; R.C.M. 1947, 92-901; amd. Sec. 81, Ch. 397, L. 1979; amd. Sec. 64, Ch. 613, L. 1989.**

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Division" defined, 39-71-116.

"Order" defined, 39-71-116.

"Employer" defined, 39-71-117.

39-71-2102. Proof of solvency to be filed. Every employer who has elected to be bound by compensation plan No. 1 shall file proof of his solvency within the time and in the form as may be prescribed by the rules or orders of the department.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2971, R.C.M. 1921; amd. Sec. 5, Ch. 139, L. 1931; re-en. Sec. 2971, R.C.M. 1935; amd. Sec. 3, Ch. 176, L. 1957; amd. Sec. 169, Ch. 147, L. 1963; amd. Sec. 1, Ch. 183, L. 1965; amd. Sec. 1, Ch. 170, L. 1969; amd. Sec. 1, Ch. 143, L. 1971; amd. Sec. 3, Ch. 443, L. 1973; amd. Sec. 2, Ch. 318, L. 1975; R.C.M. 1947, 92-902; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Division" defined, 39-71-116.

"Employer" defined, 39-71-117.

39-71-2103. Employer permitted to carry on business and settle directly with employee — individual liability. (1) If such employer making such election shall be found by the department to have the requisite financial ability to pay the compensation and benefits in this chapter provided for, then the department shall grant to the employer permission to carry on his business for the fiscal year within which such election is made and such proof filed, or the remaining portion of such fiscal year, and to make such payments directly to his employees as they may become entitled to receive the same.

(2) Each individual employer in an association, corporation, or organization of employers given permission by the department to operate as self-insured under plan No. 1 of this chapter is jointly and severally liable for all obligations incurred by the association, corporation, or organization under this chapter. An association, corporation, or organization of employers given permission to operate as self-insured must maintain excess liability coverage in amounts and under such conditions as provided by rules of the department.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2972, R.C.M. 1921; re-en. Sec. 2972, R.C.M. 1935; amd. Sec. 51, Ch. 23, L. 1975; R.C.M. 1947, 92-903(part); amd. Sec. 2, Ch. 480, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Division" defined, 39-71-116.

"Employer" defined, 39-71-117.

39-71-2104. Renewal of application. Every employer, so long as he continues in his employment and so long as he continues to be bound by compensation plan No. 1, shall, at least 30 days before the expiration of each fiscal year, renew his application to be permitted to continue to make such payments as aforesaid directly to his employees for the next ensuing fiscal year, and under like circumstances as those mentioned for the granting of such permission upon such first application, the department may renew the same from year to year.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2972, R.C.M. 1921; re-en. Sec. 2972, R.C.M. 1935; amd. Sec. 51, Ch. 23, L. 1975; R.C.M. 1947, 92-903(part); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' com-

pensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Division" defined, 39-71-116.

"Employer" defined, 39-71-117.

39-71-2105. Additional proof of solvency — revocation of order. The department may at any time require from any employer acting under compensation plan No. 1 additional proof of solvency and financial ability to pay the compensation provided by this chapter and may at any time, upon notice to such employer of not less than 10 or more than 20 days, after and upon a full hearing, revoke any order or approval theretofore made.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2973, R.C.M. 1921; re-en. Sec. 2973, R.C.M. 1935; amd. Sec. 52, Ch. 23, L. 1975; R.C.M. 1947, 92-904; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Division" defined, 39-71-116.

"Order" defined, 39-71-116.

"Employer" defined, 39-71-117.

39-71-2106. Requiring security of employer. (1) The department may require any employer who elects to be bound by compensation plan No. 1 to provide a security deposit. Such security deposit may be a surety bond, government bond, or letter of credit approved by the department and must be the greater of:

(a) $250,000; or

(b) an average of the workers' compensation liabilities incurred by the employer in Montana for the past 3 calendar years.

(2) If the department finds that an employer has lost his solvency or financial ability to pay the compensation herein provided to be paid which might reasonably be expected to be chargeable to the employer during the fiscal year to be covered by the permission or that the employer is an association, corporation, or organization of individual employers seeking permission to operate under compensation plan No. 1, the department must require the employer, before granting to him permission or before continuing or engaging in such employment subject to the provisions of compensation plan No. 1, to give security in addition to the security described in subsection (1) for the payment of compensation, which security must be in such an amount as the department finds is reasonable and necessary to meet all liabilities of the employer which may reasonably and ordinarily be expected to accrue during the fiscal year.

(3) The security provided for in subsection (2) must be deposited with the department and may be a certain estimated percent of the employer's last preceding annual payroll or a certain percent of the established amount of his annual payroll for the fiscal year; or the security may be in the form of a bond or undertaking executed to the department in the amount to be fixed by it with two or more sufficient sureties, which undertaking must be conditioned that the employer will well and truly pay or cause to be paid all sums and amounts for which the employer shall become liable under the terms of this chapter to his employees during the fiscal year; or such security may consist of any state, county, municipal, or school district bonds or the bonds or

evidence of indebtedness of any individuals or corporations which the department deems solvent; and every such deposit and the character and amount of such securities shall at all times be subject to approval, revision, or change by the department as in its judgment may be required, and upon proof of the final payment of the liability for which such securities are given, such securities or any remaining part thereof shall be returned to the depositor.

(4) The department is liable for the value and safekeeping of all such deposits or securities and shall, at any time, upon demand of a bondsman or the depositor, account for the same and the earnings thereof.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2974, R.C.M. 1921; re-en. Sec. 2974, R.C.M. 1935; amd. Sec. 53, Ch. 23, L. 1975; R.C.M. 1947, 92-905; amd. Sec. 3, Ch. 480, L. 1985; amd. Sec. 51, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Division" defined, 39-71-116.
"Payroll" defined, 39-71-116.
"Employer" defined, 39-71-117.

39-71-2107. When employer to make deposit or security to guarantee payment of compensation. Within 30 days after the happening of an accident where death or the nature of the injury renders the amount of future payments certain or reasonably certain, the employer shall make a deposit or give security, as herein defined, with the department for the protection and guaranty of the payment of such liability in such sum as the department may direct. However, if sufficient securities are already on deposit with the department or if the department determines that the employer has sufficient financial responsibility to meet the liability of the employer, together with other liabilities already accrued, no such additional deposit or security shall be demanded.

History: En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2976, R.C.M. 1921; re-en. Sec. 2976, R.C.M. 1935; amd. Sec. 55, Ch. 23, L. 1975; R.C.M. 1947, 92-907; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Division" defined, 39-71-116.
"Employer" defined, 39-71-117.

39-71-2108. Failure of employer to pay compensation — duty of department. Upon the failure of the employer to pay any compensation provided for in this chapter upon the terms and in the amounts and at the times when the same becomes due and payable, the department shall, upon demand of the person to whom compensation is due, apply any deposits made with the department to the payment of the same, and the department shall take the proper steps to convert any securities on deposit with the department or sufficient thereof into cash and to pay the same upon the liabilities of the employer accruing under the terms of this chapter, and the department shall, when necessary, collect and enforce the collection of the liability of all sureties upon any bonds which may be given by the employer to insure the payment of his liability. To these ends and for these purposes, the department shall be deemed to be the owner of the deposit and security and the obligee in the bond in trust for the purposes and may proceed in its own name to recover upon the bonds or foreclose and liquidate the securities.

History: **En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2975, R.C.M. 1921; re-en. Sec. 2975, R.C.M. 1935; amd. Sec. 54, Ch. 23, L. 1975; R.C.M. 1947, 92-906; amd. Sec. 64, Ch. 613, L. 1989.**

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Division" defined, 39-71-116.

"Employer" defined, 39-71-117.

39-71-2109. When employer may be relieved from liability. Any employer bound by compensation plan No. 1 against whom liability may exist for compensation for permanent benefits under this chapter may, with the approval of the department, be relieved therefrom by:

(1) depositing the present value or the estimated present value of the total unpaid compensation for which such liability exists for permanent total benefits, assuming interest at 7% per annum, compounded annually, with the department; or

(2) depositing with the department the sum of the unpaid permanent partial benefits for which such liability exists.

History: **En. Sec. 30, Ch. 96, L. 1915; re-en. Sec. 2977, R.C.M. 1921; re-en. Sec. 2977, R.C.M. 1935; amd. Sec. 56, Ch. 23, L. 1975; R.C.M. 1947, 92-908; amd. Sec. 2, Ch. 471, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.**

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Division" defined, 39-71-116.

"Employer" defined, 39-71-117.

Part 22

Compensation Plan Number Two

39-71-2201. Election to be bound by plan. (1) Any employer except those specified in 39-71-403 may, by filing his election to become bound by compensation plan No. 2, insure his liability to pay the compensation and benefits provided by this chapter with any insurance company authorized to transact such business in this state.

(2) Any employer electing to become bound by compensation plan No. 2 shall make his election on the form and in the manner prescribed by the department.

History: **(1)En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2978, R.C.M. 1921; re-en. Sec. 2978, R.C.M. 1935; amd. Sec. 1, Ch. 49, L. 1961; Sec. 92-1001, R.C.M. 1947; (2)En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2979, R.C.M. 1921; re-en. Sec. 2979, R.C.M. 1935; amd. Sec. 2, Ch. 49, L. 1961; amd. Sec. 57, Ch. 23, L. 1975; amd. Sec. 1, Ch. 324, L. 1977; Sec. 92-1002, R.C.M. 1947; R.C.M. 1947, 91-1001, 92-1002(1); amd. Sec. 82, Ch. 397, L. 1979; amd. Sec. 64, Ch. 613, L. 1989.**

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' com-

pensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Division" defined, 39-71-116.

"Employer" defined, 39-71-117.

39-71-2202. Policies made subject to chapter. Every policy for insurance written under compensation plan No. 2 shall be considered to be made subject to the provisions of this chapter.

History: En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2982, R.C.M. 1921; re-en. Sec. 2982, R.C.M. 1935; amd. Sec. 1, Ch. 217, L. 1951; amd. Sec. 5, Ch. 176, L. 1957; amd. Sec. 1, Ch. 203, L. 1959; amd. Sec. 170, Ch. 147, L. 1963; amd. Sec. 1, Ch. 142, L. 1971; amd. Sec. 59, Ch. 23, L. 1975; amd. Sec. 3, Ch. 318, L. 1975; R.C.M. 1947, 92-1005; amd. Sec. 13, Ch. 103, L. 1979.

39-71-2203. Content of policies — policies subject to approval, change, or revision by department. (1) All policies insuring the payment of compensation under this chapter must contain a clause to the effect that, as between the employee and the insurer, the notice to or knowledge of the occurrence of the injury on the part of the insured shall be deemed notice or knowledge, as the case may be, on the part of the insurer; that jurisdiction of the insured for the purpose of this chapter shall be jurisdiction of the insurer; and that the insurer shall in all things be bound by and subject to the awards, orders, judgments, or decrees rendered against such insured.

(2) No such policy shall be issued unless it contains the agreement of the insurer that it will promptly pay to the person entitled to compensation all the installments of compensation or other payments in this chapter provided for and that the obligation shall not be affected by any default of the insured after the injury or by any default in the giving of any notice required by such policy or by this chapter or otherwise. Such agreement shall be construed to be a direct promise by the insured to the person entitled to compensation.

(3) Every policy or contract insuring against liability for compensation under compensation plan No. 2 must contain a clause to the effect that the insurer shall be directly and primarily liable to and will pay directly to the employee or in case of death to his beneficiaries or major or minor dependents, the compensation, if any, for which the employer is liable.

(4) Every such policy shall at all times be subject to approval, change, or revision by the department and shall contain the clauses, agreements, and promises required by this chapter.

History: (1)En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2980, R.C.M. 1921; amd. Sec. 6, Ch. 139, L. 1931; re-en. Sec. 2980, R.C.M. 1935; amd. Sec. 4, Ch. 176, L. 1957; Sec. 92-1003, R.C.M. 1947; (2)En. Sec. 35, Ch. 96, L. 1915; amd. Sec. 10, Ch. 100, L. 1919; re-en. Sec. 2981, R.C.M. 1921; amd. Sec. 11, Ch. 177, L. 1929; re-en. Sec. 2981, R.C.M. 1935; amd. Sec. 1, Ch. 141, L. 1971; amd. Sec. 58, Ch. 23, L. 1975; Sec. 92-1004, R.C.M. 1947; (3), (4)En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2988, R.C.M. 1921; re-en. Sec. 2988, R.C.M. 1935; Sec. 92-1011, R.C.M. 1947; R.C.M. 1947, 92-1003, 92-1004(part), 92-1011; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

Policies to provide for freedom of choice of practitioners — professional practice not enlarged, 33-22-111.

"Insurer" defined, 39-71-116.

"Employer" defined, 39-71-117.

"Employee" defined, 39-71-118.

"Injury" or "injured" defined, 39-71-119.

39-71-2204. Insurer to submit notice of coverage within thirty days — penalty for failure. (1) The insurer shall, within 30 days after the issuance of the policy of workers' compensation insurance, submit to the department the notice of coverage stating the effective date of the policy insuring the employer and such other information as may be required by the department.

(2) The department may, in its discretion, assess a penalty of no more than $200 against an insurer which as a general business practice does not comply with the 30-day notice requirement as set forth in subsection (1) of this section.

History: En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2979, R.C.M. 1921; re-en. Sec. 2979, R.C.M. 1935; amd. Sec. 2, Ch. 49, L. 1961; amd. Sec. 57, Ch. 23, L. 1975; amd. Sec. 1, Ch. 324, L. 1977; R.C.M. 1947, 92-1002(part); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Division" defined, 39-71-116.
"Insurer" defined, 39-71-116.
"Employer" defined, 39-71-117.

39-71-2205. Policy in effect until canceled or replaced — twenty-day notification of cancellation required — penalty. (1) The policy remains in effect until canceled, and cancellation may take effect only by written notice to the named insured and to the department at least 20 days prior to the date of cancellation. However, the policy terminates on the effective date of a replacement or succeeding workers' compensation insurance policy issued to the insured. Nothing in this section prevents an insurer from canceling a policy of workers' compensation insurance before a replacement policy is issued to the insured.

(2) (a) The department may assess a penalty of up to $200 against an insurer that does not comply with the notice requirement in subsection (1).

(b) An insurer may contest the penalty assessment in a hearing conducted according to department rules.

History: En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2979, R.C.M. 1921; re-en. Sec. 2979, R.C.M. 1935; amd. Sec. 2, Ch. 49, L. 1961; amd. Sec. 57, Ch. 23, L. 1975; amd. Sec. 1, Ch. 324, L. 1977; R.C.M. 1947, 92-1002(part); amd. Sec. 1, Ch. 333, L. 1989; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

1989 Amendment: Chapter 333 inserted (2) allowing Department to assess penalty against insurer not complying with subsection (1) and allowing insurer to contest assessment in hearing. Amendment effective July 1, 1989.

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Division" defined, 39-71-116.
"Insurer" defined, 39-71-116.

39-71-2206. Deposits by insurer with department to guarantee payment of liability. (1) Before issuance of any policy by an insurer as herein authorized, the insurer must deposit with the department bonds of the United States or the state of Montana or of any school district, county, city, or town in the state of Montana or a corporate surety bond made out to and approved by the department in an amount not less than $25,000 or more than

$200,000, as the department may determine. If any insurer fails to discharge any liability after the amount thereof is determined by the department and within the time limited by the department, the department shall convert the bonds or such part thereof as is necessary into cash and from the proceeds liquidate such liability, and thereafter the insurer must make an additional deposit to meet any deficiency caused thereby. It is intended to give the department the discretion in the matter of whether an insurer has failed to discharge any liability.

(2) Within 30 days of the happening of an accident where death or the nature of the injury renders the amount of future payments certain or reasonably certain, the insurer shall make a deposit, as herein defined, with the department for the protection and guarantee of the payment of such liability in such sum as the department may direct. However, if the department considers the amount on deposit by the insurer under the provisions of subsection (1) of this section sufficient to cover all liabilities of the insurer, then no further deposit may be required.

(3) Any deposit made under the provisions of compensation plan No. 2 must be held in trust by the department as security for the payment of the liability for which the deposit was made. Such deposit may be reduced from time to time with the permission of the department as the payment of the liability of the insurer may reduce the amount required to be on deposit. Such deposit may be changed or renewed when desired by the depositor by withdrawing the same or any part thereof and substituting other deposits therefor. Upon proof of the final payment of the liability for which such deposit was made, any deposit remaining must be returned to the depositor. All earnings made by such deposit must first be applied upon any liability of the depositors, and if no such liability exists, then such earnings must upon demand be delivered to such depositor. The department and its bondsmen are liable for the value and safekeeping of such deposit and shall at any time, upon demand of a depositor, account for the same and the earnings thereof.

History: (1)En. Sec. 35, Ch. 96, L. 1915; amd. Sec. 10, Ch. 100, L. 1919; re-en. Sec. 2981, R.C.M. 1921; amd. Sec. 11, Ch. 177, L. 1929; re-en. Sec. 2981, R.C.M. 1935; amd. Sec. 1, Ch. 141, L. 1971; amd. Sec. 58, Ch. 23, L. 1975; Sec. 92-1004, R.C.M. 1947; (2)En. Sec. 35, Ch. 96, L. 1915; amd. Sec. 11, Ch. 100, L. 1919; re-en. Sec. 2984, R.C.M. 1921; re-en. Sec. 2984, R.C.M. 1935; amd. Sec. 61, Ch. 23, L. 1975; Sec. 92-1007, R.C.M. 1947; (3)En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2989, R.C.M. 1921; re-en. Sec. 2989, R.C.M. 1935; Sec. 92-1012, R.C.M. 1947; R.C.M. 1947, 92-1004(part), 92-1007, 92-1012; amd. Sec. 83, Ch. 397, L. 1979; amd. Sec. 1, Ch. 242, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Division" defined, 39-71-116.
"Insurer" defined, 39-71-116.
"Injury" or "injured" defined, 39-71-119.

39-71-2207. How insurer relieved from liability. Any compensation plan No. 2 insurer against whom liability may exist for compensation for permanent benefits under this chapter may, with the approval of the department, be relieved therefrom by:

(1) depositing the present value or the estimated present value of the total unpaid compensation for which such liability exists for permanent total benefits, assuming interest at 7% per annum, compounded annually, with the department; or

(2) depositing with the department the sum of the unpaid permanent partial benefits for which such liability exists.

History: En. Sec. 35, Ch. 96, L. 1915; re-en. Sec. 2985, R.C.M. 1921; re-en. Sec. 2985, R.C.M. 1935; amd. Sec. 62, Ch. 23, L. 1975; R.C.M. 1947, 92-1008; amd. Sec. 3, Ch. 471, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Division" defined, 39-71-116.

"Insurer" defined, 39-71-116.

Part 23

Compensation Plan Number Three

39-71-2301. Repealed. Sec. 59, Ch. 613, L. 1989. Effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2993, R.C.M. 1921; re-en. Sec. 2993, R.C.M. 1935; amd. Sec. 4, Ch. 123, L. 1957; amd. Sec. 176, Ch. 147, L. 1963; amd. Sec. 22, Ch. 329, L. 1969; amd. Sec. 69, Ch. 23, L. 1975; amd. Sec. 1, Ch. 171, L. 1975; R.C.M. 1947, 92-1105(1); amd. Sec. 14, Ch. 103, L. 1979.

39-71-2302. Repealed. Sec. 59, Ch. 613, L. 1989. Effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2990, R.C.M. 1921; re-en. Sec. 2990, R.C.M. 1935; amd. Sec. 1, Ch. 123, L. 1957; amd. Sec. 175, Ch. 147, L. 1963; amd. Sec. 1, Ch. 233, L. 1969; amd. Sec. 20, Ch. 329, L. 1969; amd. Sec. 65, Ch. 23, L. 1975; R.C.M. 1947, 92-1101; amd. Sec. 1, Ch. 232, L. 1987.

39-71-2303. Renumbered 39-71-2336 by Code Commissioner, 1989.

39-71-2304. Repealed. Sec. 59, Ch. 613, L. 1989. Effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

History: (1)En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2992, R.C.M. 1921; re-en. Sec. 2992, R.C.M. 1935; amd. Sec. 3, Ch. 123, L. 1957; amd. Sec. 21, Ch. 329, L. 1969; amd. Sec. 68, Ch. 23, L. 1975; Sec. 92-1104, R.C.M. 1947; (2) thru (5)En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2993, R.C.M. 1921; re-en. Sec. 2993, R.C.M. 1935; amd. Sec. 4, Ch. 123, L. 1957; amd. Sec. 176, Ch. 147, L. 1963; amd. Sec. 22, Ch. 329, L. 1969; amd. Sec. 69, Ch. 23, L. 1975; amd. Sec. 1, Ch. 171, L. 1975; Sec. 92-1105, R.C.M. 1947; R.C.M. 1947, 92-1104, 92-1105(3), (4); amd. Sec. 4, Ch. 283, L. 1983; amd. Sec. 2, Ch. 232, L. 1987; amd. Sec. 1, Ch. 239, L. 1987; amd. Sec. 10, Ch. 333, L. 1989; amd. Sec. 2, Ch. 641, L. 1989.

39-71-2305. Repealed. Sec. 59, Ch. 613, L. 1989. Effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

History: En. 92-1105.1 by Sec. 28, Ch. 341, L. 1969; amd. Sec. 70, Ch. 23, L. 1975; R.C.M. 1947, 92-1105.1; amd. Sec. 1, Ch. 109, L. 1987.

39-71-2306. Repealed. Sec. 59, Ch. 613, L. 1989. Effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2996, R.C.M. 1921; re-en. Sec. 1996, R.C.M. 1935; amd. Sec. 4, Ch. 233, L. 1969; amd. Sec. 71, Ch. 23, L. 1975; R.C.M. 1947, 92-1108; amd. Sec. 15, Ch. 103, L. 1979.

39-71-2307. Renumbered 39-71-2339 by Code Commissioner, 1989.

39-71-2308. Renumbered 39-71-2340 by Code Commissioner, 1989.

39-71-2309. Repealed. Sec. 16, Ch. 103, L. 1979.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3003, R.C.M. 1921; re-en. Sec. 3003, R.C.M. 1935; amd. Sec. 182, Ch. 147, L. 1963; amd. Sec. 76, Ch. 23, L. 1975; R.C.M. 1947, 92-1115.

39-71-2310. Repealed. Sec. 16, Ch. 103, L. 1979.

History: (1)En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3004, R.C.M. 1921; re-en. Sec. 3004, R.C.M. 1935; amd. Sec. 183, Ch. 147, L. 1963; Sec. 92-1116, R.C.M. 1947; (2)En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3005, R.C.M. 1921; re-en. Sec. 3005, R.C.M. 1935; amd. Sec. 77, Ch. 23, L. 1975; Sec. 92-1117, R.C.M. 1947; R.C.M. 1947, 92-1116, 92-1117.

39-71-2311. Intent and purpose of plan. It is the intent and purpose of the state fund to allow employers the option to insure their liability for workers' compensation and occupational disease coverage with a nonprofit, independent public corporation. The state fund is required to insure any employer in this state requesting coverage, and it may not refuse coverage for an employer unless an assigned risk plan is established under 39-71-431 and is in effect. The state fund must be neither more nor less than self-supporting. Premium rates must be set at a level sufficient to fund the insurance program, including the costs of administration, benefits, and adequate reserves. For the purpose of keeping the state fund solvent, it must implement variable pricing levels within individual rate classifications to reward an employer with a good safety record and penalize an employer with a poor safety record.

History: En. Sec. 1, Ch. 613, L. 1989.

Compiler's Comments

Effective Date: Section 65, Ch. 613, L. 1989, provided that this section is effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

Cross-References

"Employer" defined, 39-71-117.

39-71-2312. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Board" means the board of directors of the state compensation mutual insurance fund provided for in 2-15-1019.

(2) "Department" means the department of administration provided for in 2-15-1001.

(3) "Executive director" means the chief executive officer of the state compensation mutual insurance fund.

(4) "State fund" means the state compensation mutual insurance fund provided for in 39-71-2313. It is also known as compensation plan No. 3 or plan No. 3.

History: En. Sec. 2, Ch. 613, L. 1989.

Compiler's Comments

Effective Date: Section 65, Ch. 613, L. 1989, provided that this section is effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

39-71-2313. State compensation mutual insurance fund created. There is a state compensation mutual insurance fund known as the state fund that is a nonprofit, independent public corporation established for the purpose of allowing an option for employers to insure their liability for workers' compensation and occupational disease coverage under this chapter. The state fund exists as a domestic mutual insurer as defined in 33-3-102.

History: En. Sec. 4, Ch. 613, L. 1989.

Compiler's Comments

Effective Date: Section 65, Ch. 613, L. 1989, provided that this section is effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

39-71-2314. State fund a mutual insurance carrier. (1) The state fund is a domestic mutual insurer controlled by the laws relating to the regulation of domestic mutual insurers in this state. However, the formation, incorporation, bylaws, and bonding requirements set forth in Title 33, chapter 3, do not apply to the state fund. The state fund is not a member insurer for the purposes of the insurance guaranty association established pursuant to Title 33, chapter 10, part 1.

(2) The commissioner of insurance may not terminate the operations of the state fund based on insolvency due to the unfunded liability that is recognized to exist on the date of passage of this part.

(3) If an assigned risk plan is established and administered pursuant to 39-71-431, the state fund is subject to the premium tax liability for insurers as provided in 33-2-705 based on earned premium and paid on revenue from the previous fiscal year.

History: En. Sec. 10, Ch. 613, L. 1989.

Compiler's Comments

Effective Date: Section 65, Ch. 613, L. 1989, provided that this section is effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

39-71-2315. Management of state fund — powers and duties of the board. (1) The management and control of the state fund is vested solely in the board.

(2) The board is vested with full power, authority, and jurisdiction over the state fund. The board may perform all acts necessary or convenient in the exercise of any power, authority, or jurisdiction over the state fund, either in the administration of the state fund or in connection with the insurance business to be carried on under the provisions of this part, as fully and completely as the governing body of a private mutual insurance carrier, in order to fulfill the objectives and intent of this part.

History: En. Sec. 5, Ch. 613, L. 1989.

Compiler's Comments

Effective Date: Section 65, Ch. 613, L. 1989, provided that this section is effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

39-71-2316. Powers of the state fund — rulemaking. For the purposes of carrying out its functions, the state fund may:

(1) insure any employer for workers' compensation and occupational disease liability as the coverage is required by the laws of this state and, in connection with the coverage, provide employers' liability insurance. The state

fund may charge a minimum yearly premium to cover its administrative costs for coverage of a small employer.

(2) sue and be sued;

(3) adopt, amend, and repeal rules relating to the conduct of its business;

(4) enter into contracts relating to the administration of the state fund, including claims management, servicing, and payment;

(5) collect and disburse money received;

(6) adopt classifications and charge premiums for the classifications so that the state fund will be neither more nor less than self-supporting. The state fund must belong to the national council on compensation insurance and shall use the classifications of employment adopted by the national council and corresponding rates as a basis for setting its own rates.

(7) pay the amounts determined due under a policy of insurance issued by the state fund;

(8) hire personnel;

(9) declare dividends if there is an excess of assets over liabilities. However, dividends may not be paid until the unfunded liability of the state fund is eliminated and adequate actuarially determined reserves are determined.

(10) perform all functions and exercise all powers of a domestic mutual insurer that are necessary, appropriate, or convenient for the administration of the state fund.

History: En. Sec. 8, Ch. 613, L. 1989.

Compiler's Comments

Effective Date: Section 65, Ch. 613, L. 1989, provided that this section is effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Workers' compensation coverage, liability, and subrogation, Title 39, ch. 71, part 4.

39-71-2317. Appointment of executive director — management staff. The board shall appoint an executive director of the state fund who has general responsibility for the operations of the state fund. The executive director must have executive level experience, with knowledge of the insurance industry. The executive director must receive compensation as set by the board and serve at the pleasure of the board. The executive director may hire the management staff of the state fund, each of whom serves at the pleasure of the executive director.

History: En. Sec. 7, Ch. 613, L. 1989.

Compiler's Comments

Effective Date: Section 65, Ch. 613, L. 1989, provided that this section is effective April 21, 1989.

39-71-2318. Personal liability excluded. The members of the board, the executive director, and employees of the state fund are not liable personally, either jointly or severally, for any debt or obligation created or incurred by the state fund.

History: En. Sec. 6, Ch. 613, L. 1989.

Compiler's Comments

Effective Date: Section 65, Ch. 613, L. 1989, provided that this section is effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

Cross-References

State subject to suit, Art. II, sec. 18, Mont. Const.

Liability exposure of state government, Title 2, ch. 9, part 1.

39-71-2319. Assets and liabilities of prior state fund. All assets and funds held by the state compensation insurance fund established in former sections 39-71-2301, 39-71-2302, 39-71-2304 through 39-71-2306, and 39-71-2324 and sections 39-71-2321 through 39-71-2323, 39-71-2325 through 39-71-2327, 39-71-2336, 39-71-2339, and 39-71-2340 must be transferred to the state fund, and the state fund shall assume liability for all outstanding claims and indebtedness of the previously existing state fund.

History: En. Sec. 11, Ch. 613, L. 1989.

Compiler's Comments

Effective Date: Section 65, Ch. 613, L. 1989, provided that this section is effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

39-71-2320. Property of the state fund — investment required. All premiums and other money paid to the state fund, all property and securities acquired through the use of money belonging to the state fund, and all interest and dividends earned upon money belonging to the state fund are the sole property of the state fund and must be used exclusively for the operations and obligations of the state fund. The money collected by the state fund may not be used for any other purpose. However, state fund money must be invested by the board of investments provided for in 2-15-1808.

History: En. Sec. 9, Ch. 613, L. 1989.

Compiler's Comments

Effective Date: Section 65, Ch. 613, L. 1989, provided that this section is effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

39-71-2321. What to be deposited in state fund. All premiums, penalties, recoveries by subrogation, interest earned upon money belonging to the state fund, and securities acquired by or through use of money must be deposited in the state fund.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2993, R.C.M. 1921; re-en. Sec. 2993, R.C.M. 1935; amd. Sec. 4, Ch. 123, L. 1957; amd. Sec. 176, Ch. 147, L. 1963; amd. Sec. 22, Ch. 329, L. 1969; amd. Sec. 69, Ch. 23, L. 1975; amd. Sec. 1, Ch. 171, L. 1975; R.C.M. 1947, 92-1105(2); amd. Sec. 5, Ch. 283, L. 1983; amd. Sec. 32, Ch. 613, L. 1989.

Compiler's Comments

1989 Amendment: At end changed "industrial insurance expendable trust fund" to "state fund"; and made minor changes in phraseology. Amendment effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

39-71-2322. Money in state fund held in trust — disposition of funds upon repeal of chapter. The money coming into the state fund must be held in trust for the purpose for which the money was collected. If this chapter is repealed, the money is subject to the disposition provided by the legislature repealing this chapter. In the absence of a legislative provision, distribution must be in accordance with the justice of the matter, due regard being had to obligations of compensation incurred and existing.

History: En. Sec. 24, Ch. 96, L. 1915; re-en. Sec. 2966, R.C.M. 1921; re-en. Sec. 2966, R.C.M. 1935; amd. Sec. 168, Ch. 147, L. 1963; R.C.M. 1947, 92-840; amd. Sec. 6, Ch. 283, L. 1983; amd. Sec. 33, Ch. 613, L. 1989.

Compiler's Comments

1989 Amendment: In first sentence changed "industrial insurance expendable trust fund" to "state fund"; and made minor changes in phraseology. Amendment effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

39-71-2323. Surplus in state fund — payment of dividends. If at the end of any fiscal year there exists in the state fund an excess of assets over liabilities and a reasonable surplus, such liabilities to include necessary reserves, which excess may be divided safely, then the state fund may declare a dividend in the manner as the rules of the state fund prescribe to those employers who have paid premiums into the state fund in excess of liabilities chargeable to them in the fund for that year. In determining the amount or proportion of the balance to which the employer is entitled as dividends, the state fund shall give consideration to the prior paid premiums and accident experience of each individual employer during the dividend year.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 2998, R.C.M. 1921; re-en. Sec. 2998, R.C.M. 1935; amd. Sec. 6, Ch. 123, L. 1957; amd. Sec. 180, Ch. 147, L. 1963; amd. Sec. 72, Ch. 23, L. 1975; R.C.M. 1947, 92-1110; amd. Sec. 7, Ch. 283, L. 1983; amd. Sec. 34, Ch. 613, L. 1989.

Compiler's Comments

1989 Amendment: In two places changed "industrial insurance expendable trust fund" to "state fund" and in three places changed "division" to "state fund"; and made minor changes in phraseology. Amendment effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

Cross-References

"Division" defined, 39-71-116.
"Year" defined, 39-71-116.
"Employer" defined, 39-71-117.

39-71-2324. Repealed. Sec. 59, Ch. 613, L. 1989. Effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

History: En. Sec. 40, Ch. 96, L. 1915; amd. Sec. 7, Ch. 196, L. 1921; re-en. Sec. 3000, R.C.M. 1921; re-en. Sec. 3000, R.C.M. 1935; amd. Sec. 17, Ch. 176, L. 1953; amd. Sec. 186, Ch. 147, L. 1963; amd. Sec. 73, Ch. 23, L. 1975; R.C.M. 1947, 92-1112; amd. Sec. 8, Ch. 283, L. 1983.

39-71-2325. State fund to keep accounts of segregations. The state fund shall keep an accurate account of all the segregations of the state fund and shall divert from the fund any sums necessary to meet monthly payments, pending the conversion into cash of any security, and in such case shall repay the same out of the cash realized from the security.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3001, R.C.M. 1921; re-en. Sec. 3001, R.C.M. 1935; amd. Sec. 187, Ch. 147, L. 1963; amd. Sec. 74, Ch. 23, L. 1975; R.C.M. 1947, 92-1113; amd. Sec. 9, Ch. 283, L. 1983; amd. Sec. 35, Ch. 613, L. 1989.

Compiler's Comments

1989 Amendment: Changed "division" to "state fund" and "industrial insurance expendable trust fund" to "state fund"; and made minor change in phraseology. Amendment effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

Cross-References

"Division" defined, 39-71-116.

39-71-2326. Repealed. Sec. 6, Ch. 664, L. 1987.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3010, R.C.M. 1921; re-en. Sec. 3010, R.C.M. 1935; amd. Sec. 184, Ch. 147, L. 1963; amd. Sec. 81, Ch. 23, L. 1975; R.C.M. 1947, 92-1122; amd. Sec. 10, Ch. 283, L. 1983.

39-71-2327. Earnings of state fund to be credited to fund — improper use a felony. All earnings made by the state fund by reason of interest paid for the deposit thereof or otherwise must be credited to and become a part of the fund, and the making of profit, either directly or indirectly, by any person out of the use of the fund is a felony. A person convicted of an offense under this section is punishable by imprisonment in the state prison for a term not to exceed 2 years or a fine of not more than $5,000, or both.

History: **En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3011, R.C.M. 1921; re-en. Sec. 3011, R.C.M 1935; amd. Sec. 185, Ch. 147, L. 1963; amd. Sec. 82, Ch. 23, L. 1975; R.C.M. 1947, 92-1123; amd. Sec. 11, Ch. 283, L. 1983; amd. Sec. 36, Ch. 613, L. 1989.**

Compiler's Comments

1989 Amendment: Near beginning of first sentence changed industrial insurance expendable trust fund" to "state fund"; and made minor changes in phraseology. Amendment effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

39-71-2328 through 39-71-2335 reserved.

39-71-2336. Manner of electing — contract or policy of insurance — payment of premium. The state fund shall prescribe the procedure by which an employer may elect to be bound by compensation plan No. 3, the effective time of the election, and the manner in which the election is terminated for reasons other than default in payment of premiums. Every employer electing to be bound by compensation plan No. 3 must receive from the state fund a contract or policy of insurance in a form approved by the department. The premium must be paid by the employer to the state fund at such times as the state fund prescribes and must be paid over by the state fund to the state treasurer to the credit of the state fund.

History: **En. Sec. 40, Ch. 96, L. 1915; amd. Sec. 6, Ch. 196, L. 1921; re-en. Sec. 2991, R.C.M. 1921; re-en. Sec. 2991, R.C.M. 1935; amd. Sec. 2, Ch. 123, L. 1957; amd. Sec. 178, Ch. 147, L. 1963; amd. Sec. 2, Ch. 233, L. 1969; amd. Sec. 67, Ch. 23, L. 1975; R.C.M. 1947, 92-1103; amd. Sec. 3, Ch. 283, L. 1983; amd. Sec. 29, Ch. 613, L. 1989; Sec. 39-71-2303, MCA 1987; redes. 39-71-2336 by Code Commissioner, 1989.**

Compiler's Comments

1989 Amendment: In five places changed "division" to "state fund"; at end of second sentence changed "division" to "department"; at end of third sentence substituted "state fund" for "industrial insurance expendable trust fund"; and made minor changes in phraseology. Amendment effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

Cross-References

"Department" defined, 39-71-116.

"Employer" defined, 39-71-117.

39-71-2337. State fund to submit notice of coverage within thirty days — penalty for failure. (1) The state fund shall, within 30 days after the issuance of an insurance policy, submit to the department the notice of coverage stating the effective date of the policy insuring the employer and other information the department requires.

(2) The department may assess a penalty of no more than $200 against the state fund if, as a general business practice, the state fund does not comply with the 30-day notice requirement.

History: **En. Sec. 44, Ch. 613, L. 1989.**

Compiler's Comments

Effective Date: Section 65, Ch. 613, L. 1989, provided that this section is effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

39-71-2338. Policy remains in effect until canceled or replaced — twenty-day notification of cancellation required. The insurance policy remains in effect until canceled. Cancellation may take effect only by written notice to the named insured and to the department at least 20 days prior to the date of cancellation. However, the policy terminates on the effective date of a replacement or succeeding insurance policy issued to the insured. Nothing in this section prevents the state fund from canceling an insurance policy before a replacement policy is issued to the insured.

History: En. Sec. 45, Ch. 613, L. 1989.

Compiler's Comments

Effective Date: Section 65, Ch. 613, L. 1989, provided that this section is effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

39-71-2339. Cancellation of coverage — thirty days' notice required. The state fund may cancel an employer's right to operate under plan No. 3 of the Workers' Compensation Act for failure to pay the premiums due. When the state fund cancels an employer's coverage, it shall notify the employer of its intent to cancel the employer at least 30 days before the cancellation becomes effective. After the cancellation date, the employer has the same status as an employer who is not enrolled under the Workers' Compensation Act.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3002, R.C.M. 1921; amd. Sec. 1, Ch. 201, L. 1935; re-en. Sec. 3002, R.C.M. 1935; amd. Sec. 10, Ch. 235, L. 1947; amd. Sec. 7, Ch. 123, L. 1957; amd. Sec. 181, Ch. 147, L. 1963; amd. Sec. 75, Ch. 23, L. 1975; amd. Sec. 1, Ch. 225, L. 1975; R.C.M. 1947, 92-1114(part); amd. Sec. 30, Ch. 613, L. 1989; Sec. 39-71-2307, MCA 1987; redes. 39-71-2339 by Code Commissioner, 1989.

Compiler's Comments

1989 Amendment: In two places changed "division" to "state fund"; near beginning of second sentence, after "cancels", substituted "an employer's coverage" for "an employer's right for failure to pay premiums"; and made minor changes in phraseology. Amendment effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

Cross-References

"Department" defined, 39-71-116.
"Order" defined, 39-71-116.
"Employer" defined, 39-71-117.

39-71-2340. Collection in case of default. (1) If an employer under plan No. 3 defaults in any payment to the state fund, the state fund may collect the sum due in a civil action in the name of the state. The right of action is cumulative.

(2) If an employer's right to operate has been canceled by the state fund for failure to pay premiums and the state fund finds that the property and assets of the employer are not sufficient to pay the premiums, the state fund may compromise the claim for premiums and accept a payment of an amount less than the total amount due.

History: En. Sec. 40, Ch. 96, L. 1915; re-en. Sec. 3002, R.C.M. 1921; amd. Sec. 1, Ch. 201, L. 1935; re-en. Sec. 3002, R.C.M. 1935; amd. Sec. 10, Ch. 235, L. 1947; amd. Sec. 7, Ch. 123, L. 1957; amd. Sec. 181, Ch. 147, L. 1963; amd. Sec. 75, Ch. 23, L. 1975; amd. Sec. 1, Ch. 225, L. 1975; R.C.M. 1947, 92-1114(part); amd. Sec. 31, Ch. 613, L. 1989; Sec. 39-71-2308, MCA 1987; redes. 39-71-2340 by Code Commissioner, 1989.

Compiler's Comments

1989 Amendment: In four places changed "division" to "state fund"; and made minor changes in phraseology. Amendment effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

Cross-References

"Department" defined, 39-71-116.
"Employer" defined, 39-71-117.

Part 24

Mediation

Part Cross-References

Uniform Arbitration Act, Title 27, ch. 5.

39-71-2401. Disputes — jurisdiction — evidence — settlement requirements — mediation. (1) A dispute concerning benefits arising under this chapter or chapter 72, other than the disputes described in subsection (2), must be brought before a department mediator as provided in this part. If a dispute still exists after the parties satisfy the mediation requirements in this part, either party may petition the workers' compensation court for a resolution.

(2) A dispute arising under this chapter that does not concern benefits or a dispute for which a specific provision of this chapter gives the department jurisdiction must be brought before the department.

(3) An appeal from a department order may be made to the workers' compensation court.

(4) The common law and statutory rules of evidence do not apply in a case brought to hearing before the department.

(5) Except as otherwise provided in this chapter, before a party may bring a dispute concerning benefits before a mediator, the parties shall attempt to settle as follows:

(a) The party making a demand shall present the other party with a specific written demand that contains sufficient explanation and documentary evidence to enable the other party to thoroughly evaluate the demand.

(b) The party receiving the demand shall respond in writing within 15 working days of receipt. If the demand is denied in whole or in part, the response shall state the basis of the denial.

(c) Upon motion of a party or upon the mediator's own motion, the mediator has the authority to dismiss a petition if he finds that either party did not comply with this subsection. A decision dismissing a petition under this subsection must be in writing and must state in detail the grounds for dismissal. The mediator's decision may be reviewed by the workers' compensation court upon motion of a party.

(d) Nothing in this subsection relieves a party of an obligation otherwise contained in this chapter.

History: En. Sec. 8, Ch. 464, L. 1987; amd. Sec. 1, Ch. 427, L. 1989; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

1989 Amendment: Chapter 427 near beginning of (5)(c) inserted "or upon the mediator's own motion" and inserted second sentence relating to form of petition for dismissal; and made minor changes in phraseology.

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

39-71-2402 through 39-71-2405 reserved.

39-71-2406. Purpose. The purpose of this part is to prevent when possible the filing in the workers' compensation court of actions by claimants or insurers relating to claims under chapter 71 or 72 of this title if an equitable and reasonable resolution of the dispute may be effected at an earlier stage. To achieve this purpose, this part provides for a procedure for mandatory, nonbinding mediation. It is the intent of this part that the mediation process be used to resolve cases on an informal basis at minimal cost to the parties, and to this end, the parties are required to fully present their cases at the mediation level. However, if a cause proceeds to the workers' compensation court, the parties are not precluded from presenting additional evidence before the court. If a new issue is raised at the workers' compensation court that was not raised at mediation, the court shall remand the issue to the mediator for consideration.

History: **En. Sec. 52, Ch. 464, L. 1987; amd. Sec. 2, Ch. 427, L. 1989.**

Compiler's Comments

1989 Amendment: Inserted last three sentences relating to the purpose of mediation, provision for judicial review of additional evidence, and remand to mediator if new issue is raised at judicial review.

39-71-2407. Department authority — rules. (1) The department shall designate mediators and shall implement the provisions of this part.

(2) The department may adopt the rules necessary to implement this part. The rules may prescribe:

(a) the qualifications of mediators; and

(b) a procedure for the conduct of mediation proceedings.

(3) The cost to the department of implementing this part must be paid out of the workers' compensation administration fund.

History: **En. Sec. 53, Ch. 464, L. 1987.**

39-71-2408. Mandatory, nonbinding mediation. (1) Except as otherwise provided, in a dispute arising under chapter 71 or 72 of this title, the insurer and claimant shall mediate any issue concerning benefits and the mediator shall issue a report following the mediation process recommending a solution to the dispute before either party may file a petition in the workers' compensation court.

(2) The resolution recommended by the mediator is without administrative or judicial authority and is not binding on the parties.

History: **En. Sec. 54, Ch. 464, L. 1987.**

39-71-2409. Duties of mediator. A mediator shall assist the parties in negotiating a resolution to their dispute by:

(1) facilitating an exchange of information between the parties;

(2) assuring that all relevant information is brought forth during the mediation process;

(3) suggesting possible solutions to issues of dispute between the parties;

(4) recommending a solution; and

(5) assisting the parties to voluntarily resolve their dispute.

History: **En. Sec. 55, Ch. 464, L. 1987; amd. Sec. 3, Ch. 427, L. 1989.**

Compiler's Comments

1989 Amendment: In (2) substituted "information" for "evidence".

39-71-2410. Limitations on mediation proceedings. (1) Except as may be necessary for the workers' compensation court to rule on issues arising under 39-71-2401(5)(c) or 39-71-2411(7)(c), mediation proceedings are:

(a) held in private;

(b) informal and held without a verbatim record; and

(c) confidential.

(2) All communications, verbal or written, from the parties to the mediator and any information and evidence presented to the mediator during the proceeding are confidential.

(3) A mediator's files and records are closed to all but the parties.

(4) (a) A mediator may not be called to testify in any proceeding concerning the issues discussed in the mediation process.

(b) Neither the mediator's report nor any of the information or recommendations contained in it are admissible as evidence in any action subsequently brought in any court of law.

(5) Notwithstanding subsections (1) through (4), a mediator may issue a report and the parties and the mediator may be required to attend a conference before the workers' compensation court as set forth in 39-71-2411.

History: En. Sec. 56, Ch. 464, L. 1987; amd. Sec. 4, Ch. 427, L. 1989.

Compiler's Comments

1989 Amendment: At beginning of (1) inserted exception clause; and near end of (5) inserted "before the workers' compensation court".

39-71-2411. Mediation procedure. (1) Except as otherwise provided, a claimant or an insurer having a dispute relating to benefits under chapter 71 or 72 of this title may petition the department for mediation of the dispute.

(2) A party may take part in mediation proceedings with or without representation.

(3) The mediator shall review the department file for the case and may receive any additional documentation or argument either party submits.

(4) The mediator shall request that each party offer argument summarizing the party's position. A party's argument must fully present the party's case. The argument is not limited by the rules of evidence.

(5) After the parties have presented all their information and argument to the mediator, he shall recommend a solution to the parties within a reasonable time to be established by rule.

(6) A party shall notify the mediator within 45 days of the mailing of his report whether the party accepts the mediator's recommendation. If either party does not accept the mediator's recommendation, the party may petition the workers' compensation court for resolution of the dispute.

(7) (a) If a mediator determines that either party failed to cooperate in the mediation process, the mediator shall prepare a written report setting forth the determination and the grounds for the determination. The report must be mailed to the parties and to the workers' compensation court. Unless a party disputes the determination as set forth in subsection (7)(c), the parties shall repeat the mediation process, but only one time.

(b) A mediator may determine that a party has failed to cooperate in the mediation process only if the party failed to:

(i) supply information or offer a summary of the party's position as reasonably requested by the mediator;

(ii) attend scheduled mediation conferences unless excused by the mediator; or

(iii) listen to and review the information and position offered by the opposing party.

(c) If a party disputes a mediator's determination that the party failed to cooperate in the mediation process, the party may file a petition with the workers' compensation court. Upon receipt of a petition, the court shall summon the parties and the mediator to determine by oral discussion whether the mediator's determination of noncooperation is supportable. If the court finds that the mediator's determination is supportable, the court may order the parties to attempt a second time to mediate their dispute.

History: **En. Sec. 57, Ch. 464, L. 1987; amd. Sec. 5, Ch. 427, L. 1989; amd. Sec. 64, Ch. 613, L. 1989.**

Compiler's Comments

1989 Amendment: Chapter 427 in (3) and (5) substituted "argument" for "evidence"; in middle of (4), after "argument", substituted "must fully present the party's case" for "must include the evidence the party would present if the case were being presented to the worker's compensation judge"; and made minor changes in phraseology.

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Part 25

Employer's Payroll Tax

39-71-2501. *(Temporary)* **Definitions.** As used in this part, the following definitions apply:

(1) "Department" means the department of labor and industry provided for in 2-15-1701.

(2) "Employer" has the meaning set forth in 39-71-117.

(3) "Payroll" means the payroll of an employer for each of the calendar quarters ending March 31, June 30, September 30, and December 31, for all employments covered under 39-71-401.

(4) "State fund" means the state compensation mutual insurance fund.

(5) "Tax" means the workers' compensation payroll tax provided for in 39-71-2503.

(6) "Tax account" means the workers' compensation tax account created by 39-71-2504. *(Terminates June 30, 1991—sec. 10, Ch. 664, L. 1987.)*

History: **En. Sec. 1, Ch. 664, L. 1987; amd. Sec. 57, Ch. 83, L. 1989; amd. Sec. 43, Ch. 613, L. 1989.**

Compiler's Comments

1989 Amendments: Chapter 83 deleted definition of Board.

Chapter 613 in definition of state fund substituted "state compensation mutual insurance fund" for "state compensation insurance fund referred to in 39-71-2301". Amendment effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

39-71-2502. *(Temporary)* **Findings and purpose.** (1) Based on current liabilities and actuarial analysis, an unfunded liability presently exists in the state fund and is projected to increase. While legislative action is required to correct the causes of the unfunded liability, those actions will not provide sufficient funds to permit the state fund to pay its existing liabilities and obligations in a timely manner from premium and investment income available to the state fund. Therefore, it is necessary to provide a source of funding for the unfunded liability in addition to premium and investment income.

(2) The police power of the state extends to all great public needs. The state, in the exercise of its police power, has determined that it is greatly and

immediately necessary to the public welfare to make workers' compensation insurance available to all employers through the state fund as the insurer of last resort. In making this insurance available, the state fund has incurred the unfunded liability described in subsection (1). The burden of this unfunded liability should not be borne solely by those employers who have insured with the state fund because the availability of insurance to all employers through the state fund has benefited all employers who have workers' compensation coverage. Therefore, all employers who have employments covered by the workers' compensation laws should share in the cost of the unfunded liability.

(3) The purpose of this part is to provide a supplemental source of financing for the unfunded liability. *(Terminates June 30, 1991—sec. 10, Ch. 664, L. 1987.)*

History: En. Sec. 2, Ch. 664, L. 1987.

Compiler's Comments

Contingent Repealer: Section 1, Ch. 428, L. 1989, purported to amend this section to insert language to ensure payroll tax is used only to reduce unfunded liability. However, sec. 6, Ch. 641, L. 1989, provided: "If Senate Bill No. 405 is not passed and approved, Chapter 428, Laws of 1989, is repealed." Senate Bill No. 405 was not passed and approved, therefore Ch. 428 is repealed.

39-71-2503. *(Temporary)* **Workers' compensation payroll tax — penalty.** (1) (a) There is imposed on each employer a workers' compensation payroll tax in an amount equal to 0.3% of the employer's payroll in the preceding calendar quarter for all employments covered under 39-71-401. This payroll tax must be used to reduce the unfunded liability in the state fund.

(b) The tax is due and payable following the end of each calendar quarter, commencing with the quarter ending September 30, 1987.

(c) The tax must be paid to and collected by the department. The department shall prepare appropriate returns to be filed by each employer or insurer with the payment of the tax.

(d) Each employer shall maintain the records the department requires concerning the employer's payroll. The records are subject to inspection by the department and its employees and agents during regular business hours.

(e) Taxes not paid when due bear interest at the rate of 1% a month. The employer shall also pay a penalty equal to 10% of the amount of the delinquent tax.

(2) All collections of the tax are appropriated to and must be deposited as received in the tax account. The tax is in addition to any other tax or fee assessed against employers subject to the tax.

(3) Sections 15-35-112 through 15-35-114, 15-35-121, and 15-35-122 regarding deficiency assessments, credits for overpayment, statute of limitations, penalties, and department rulemaking authority apply to the tax, to employers, and to the department. *(Terminates June 30, 1991—sec. 10, Ch. 664, L. 1987.)*

History: En. Sec. 3, Ch. 664, L. 1987.

39-71-2504. *(Temporary)* **Workers' compensation tax account.** (1) There is a workers' compensation tax account in the state special revenue fund.

(2) All collections of the tax, interest and penalties on the tax, and revenue appropriated to the account under section 11, Chapter 9, Special Laws of June 1989, must be deposited in the account and are statutorily appropriated,

as provided in 17-7-502, to the department to be used to reduce the unfunded liability in the state fund. *(Terminates June 30, 1991—sec. 10, Ch. 664, L. 1987.)*

History: En. Sec. 4, Ch. 664, L. 1987; amd. Sec. 10, Ch. 9, Sp. L. June 1989.

Compiler's Comments

1989 Special Session Amendment: In (1) inserted "workers' compensation tax"; in (2) inserted reference to revenue appropriated under sec. 11, Ch. 9, Sp. L. June 1989; and made minor changes in phraseology and form. Amendment effective July 17, 1989.

Part 26

Self-Insurers Guaranty Fund

Part Compiler's Comments

Effective Date: Section 16, Ch. 244, L. 1989, provided: "(1) [Section 14] [a noncodified extension of rulemaking authority] and [this section] are effective on passage and approval.

(2) [Sections 1 through 13] [39-71-2601 through 39-71-2604, 39-71-2609 through 39-71-2611, and 39-71-2615 through 39-71-2620] and [section 15] [a noncodified codification instruction] are effective July 1, 1989. Approved March 22, 1989.

Part Cross-References

Insurance guaranty associations, Title 33, ch. 10.

39-71-2601. Short title. This part may be cited as the "Montana Self-Insurers Guaranty Fund Act".

History: En. Sec. 1, Ch. 244, L. 1989.

39-71-2602. Purpose — construction. (1) The purposes of this part are to provide a mechanism for the payment of covered workers' compensation claims of employers bound by compensation plan No. 1 who are unable to pay the claims because of insolvency, to establish a fund from which the claims may be paid, and to establish a board to assess the cost of the protection among those employers.

(2) This part must be liberally construed to effect its purposes. The statement of its purposes constitutes an aid and a guide to the act's interpretation.

History: En. Sec. 2, Ch. 244, L. 1989.

39-71-2603. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of directors of the Montana self-insurers guaranty fund.

(2) "Fund" means the Montana self-insurers guaranty fund established pursuant to 39-71-2609.

(3) "Insolvent private self-insurer" means an employer:

(a) (i) that is unable to pay workers' compensation claims because:

(A) it has been determined to be insolvent by a court of competent jurisdiction; or

(B) bankruptcy proceedings have been instituted by or against it; or

(ii) whose claims are not being paid on its behalf; and

(b) whose security has been exhausted pursuant to 39-71-2108.

(4) "Member" means an employer bound by compensation plan No. 1 that participates in the Montana self-insurers guaranty fund.

(5) "Private self-insurer" means a private employer bound by compensation plan No. 1 that has secured the payment of workers' compensation claims pursuant to 39-71-2101.

History: En. Sec. 3, Ch. 244, L. 1989.

39-71-2604. Board of directors of fund. (1) There is a board of directors of the Montana self-insurers guaranty fund.

(2) The board consists of five members who are representatives of private self-insurers and who shall serve staggered 4-year terms.

(3) Board members are elected by the members of the fund, with each member having one vote.

(4) Board members may be reimbursed from the assets of the fund for the actual expenses incurred in connection with their duties as board members.

History: **En. Sec. 4, Ch. 244, L. 1989.**

39-71-2605 through 39-71-2608 reserved.

39-71-2609. Establishment of fund — employer participation required. (1) There is a nonprofit unincorporated legal entity, to be known as the Montana self-insurers guaranty fund, financed as provided in 39-71-2615 and 39-71-2616. The fund shall perform its functions under rules adopted by, and powers exercised through, the board established under 39-71-2604.

(2) A private self-insurer shall participate as a member in the fund as a condition of the authority to self-insure in this state under 39-71-2101.

(3) The department shall consult with the board regarding the suitability of allowing an employer to self-insure or to continue as a self-insured employer.

History: **En. Sec. 5, Ch. 244, L. 1989.**

39-71-2610. Rulemaking — powers of fund. (1) The board shall establish the rules necessary to carry out the purposes of this part and to meet the responsibilities of the fund.

(2) The fund may carry out its responsibilities directly or by contract. It may, if it considers necessary, purchase services and insurance and borrow funds.

(3) The fund may receive confidential information concerning the financial condition of a private self-insurer whose liabilities to pay compensation may devolve upon the fund. The board shall adopt rules to prevent dissemination of the information.

History: **En. Sec. 6, Ch. 244, L. 1989.**

39-71-2611. Duties, liabilities, and rights of fund. (1) The fund shall assume the workers' compensation obligations of a private self-insurer that come due after the private self-insurer has been determined to be an insolvent self-insurer.

(2) The fund is not liable for the payment of any penalties or interest assessed for any act or omission of a person acting on behalf of the fund.

(3) The fund is a party in interest in all proceedings involving workers' compensation claims against an insolvent private self-insurer whose workers' compensation obligations have been paid or assumed by the fund. The fund has the same rights and defenses as the insolvent private self-insurer, including but not limited to all of the following:

(a) to appear and deny, defend, and appeal a claim; and

(b) to receive notice of, investigate, adjust, compromise, settle, and pay a claim.

History: **En. Sec. 7, Ch. 244, L. 1989.**

39-71-2612 through 39-71-2614 reserved.

39-71-2615. Initial fee — assessment. (1) A private self-insurer shall pay to the fund an initial fee of $1,000 upon becoming a member. Thereafter, a member's financial obligation to the fund must be established by assessment as provided in subsection (2).

(2) The fund may assess each of its members a pro rata share of the amount necessary to carry out the purposes of this part. However, the total annual assessments in any calendar year may not exceed 5% of the indemnity compensation paid by each member during the previous calendar year. Funds obtained by assessment pursuant to this subsection may be used only for the purposes of this part.

(3) A former member is liable for assessments made by the fund for 3 years following the date the member's status as a private self-insurer is terminated, whether the termination is by action of the private self-insurer or the department. A former member's assessment must be based on the 12-month period immediately preceding the member's termination of its status as a private self-insurer.

(4) The board shall certify to the department the collection and receipt of assessments, noting any delinquencies. The board shall take appropriate action to collect a delinquent assessment.

History: **En. Sec. 8, Ch. 244, L. 1989.**

39-71-2616. Reimbursement for obligations paid and assumed. (1) The fund shall obtain reimbursement from an insolvent private self-insurer up to the amount of the insolvent private self-insurer's workers' compensation obligations paid and assumed by the fund. This includes reimbursement for reasonable administrative and legal costs.

(2) This right, as subrogee of any claimants in any action to collect against the private self-insurer as the debtor, includes but is not limited to a right to a claim for wages and other necessities of life advanced to any claimants.

(3) The fund may obtain from the security deposit or proceeds of other workers' compensation insurance of an insolvent private self-insurer the amount of the insolvent private self-insurer's compensation obligations, including reasonable administrative and legal costs, paid or assumed by the fund.

(4) The fund may bring an action against any other insurance carrier and person to recover compensation paid and liability assumed by the fund, including but not limited to:

(a) any excess insurance carrier of the private self-insurer; and

(b) any person whose negligence or breach of any obligation contributed to any underestimation of the private self-insurer's total accrual of liability as reported to the department.

History: **En. Sec. 9, Ch. 244, L. 1989.**

39-71-2617. Tax exemption. The fund is exempt from payment of all fees and taxes levied by this state or by any city, county, or other political subdivision, except taxes levied on real or personal property.

History: **En. Sec. 10, Ch. 244, L. 1989.**

39-71-2618. Immunity. There is no liability on the part of, and no claim for relief of any nature may arise against, any member, the fund, its agents or employees, or the board for any action taken by them in the performance of their powers and duties under this part.

History: **En. Sec. 11, Ch. 244, L. 1989.**

39-71-2619. Notification of insolvency by private self-insurer. As a condition of the privilege to self-insure pursuant to Title 39, chapter 71, part 21, a private self-insurer shall agree in writing to notify the department and the fund within 24 hours of the filing of any bankruptcy or determination of insolvency relating to that private self-insurer.

History: **En. Sec. 12, Ch. 244, L. 1989.**

39-71-2620. Audit requirement. Biannually or within 6 months after the close of any fiscal year in which the fund has assumed the workers' compensation obligations of an insolvent private self-insurer, the fund shall:

(1) contract for an independent certified audit of the financial activities of the fund; and

(2) report on the financial status of the fund to the department and to fund members.

History: **En. Sec. 13, Ch. 244, L. 1989.**

Parts 27 and 28 reserved

Part 29

Workers' Compensation Judge

39-71-2901. Location of office — court powers. (1) The principal office of the workers' compensation judge shall be in the city of Helena.

(2) The workers' compensation court has power to:

(a) preserve and enforce order in its immediate presence;

(b) provide for the orderly conduct of proceedings before it and its officers;

(c) compel obedience to its judgments, orders, and process in the same manner and by the same procedures as in civil actions in district court;

(d) compel the attendance of persons to testify; and

(e) punish for contempt in the same manner and by the same procedures as in district court.

History: **En. 92-850 by Sec. 4, Ch. 537, L. 1975; R.C.M. 1947, 92-850; amd. Sec. 58, Ch. 464, L. 1987.**

39-71-2902. Operating expenses. The workers' compensation judge may employ such employees as may be required to carry out the duties under this part. All expenditures of the workers' compensation judge, including but not limited to salaries, traveling expenses, office rent, office equipment, and supplies, shall be paid out of the workers' compensation administration fund.

History: **En. 92-851 by Sec. 5, Ch. 537, L. 1975; R.C.M. 1947, 92-851.**

39-71-2903. Administrative procedure act and rules of evidence applicable. All proceedings and hearings before the workers' compensation judge shall be in accordance with the appropriate provisions of the Montana Administrative Procedure Act. The workers' compensation judge is bound by common law and statutory rules of evidence.

History: **En. 92-852 by Sec. 6, Ch. 537, L. 1975; R.C.M. 1947, 92-852(1); amd. Sec. 59, Ch. 464, L. 1987.**

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

39-71-2904. Direct appeal to supreme court. Notwithstanding 2-4-701 through 2-4-704, an appeal from a final decision of the workers' compensation judge shall be filed directly with the supreme court of Montana in the manner provided by law for appeals from the district court in civil cases.

History: **En. 92-852 by Sec. 6, Ch. 537, L. 1975; R.C.M. 1947, 92-852(2).**

39-71-2905. Petition to workers' compensation judge. A claimant or an insurer who has a dispute concerning any benefits under chapter 71 of this title may petition the workers' compensation judge for a determination of the dispute after satisfying dispute resolution requirements otherwise provided in this chapter. The judge, after a hearing, shall make a determination of the dispute in accordance with the law as set forth in chapter 71 of this title. If the dispute relates to benefits due a claimant under chapter 71, the judge shall fix and determine any benefits to be paid and specify the manner of payment. After parties have satisfied dispute resolution requirements provided elsewhere in this chapter, the workers' compensation judge has exclusive jurisdiction to make determinations concerning disputes under chapter 71, except as provided in 39-71-317 and 39-71-516. The penalties and assessments allowed against an insurer under chapter 71 are the exclusive penalties and assessments that can be assessed by the workers' compensation judge against an insurer for disputes arising under chapter 71.

History: **En. 92-848 by Sec. 2, Ch. 537, L. 1975; R.C.M. 1947, 92-848(1); amd. Sec. 4, Ch. 63, L. 1979; amd. Sec. 11, Ch. 601, L. 1985; amd. Sec. 60, Ch. 464, L. 1987.**

Cross-References

"Insurer" defined, 39-71-116.

39-71-2906. Repealed. Sec. 68, Ch. 464, L. 1987.

History: **En. 92-848 by Sec. 2, Ch. 537, L. 1975; R.C.M. 1947, 92-848(2).**

39-71-2907. Increase in award for unreasonable delay or refusal to pay. (1) When payment of compensation has been unreasonably delayed or refused by an insurer, either prior or subsequent to the issuance of an order by the workers' compensation judge granting a claimant compensation benefits, the full amount of the compensation benefits due a claimant between the time compensation benefits were delayed or refused and the date of the order granting a claimant compensation benefits may be increased by the workers' compensation judge by 20%. The question of unreasonable delay or refusal shall be determined by the workers' compensation judge, and such a finding constitutes good cause to rescind, alter, or amend any order, decision, or award previously made in the cause for the purpose of making the increase provided herein.

(2) A finding of unreasonableness under this section does not constitute a finding that the insurer acted in bad faith or violated the unfair trade practices provisions of Title 33, chapter 18.

History: **En. 92-849 by Sec. 3, Ch. 537, L. 1975; R.C.M. 1947, 92-849; amd. Sec. 5, Ch. 63, L. 1979; amd. Sec. 61, Ch. 464, L. 1987.**

Cross-References

"Insurer" defined, 39-71-116.

"Order" defined, 39-71-116.

39-71-2908. Repealed. Sec. 68, Ch. 464, L. 1987.

History: **En. 92-848 by Sec. 2, Ch. 537, L. 1975; R.C.M. 1947, 92-848(3).**

39-71-2909. Authority to review, diminish, or increase awards. The judge may, upon the petition of a claimant or an insurer that the disability of the claimant has changed, review, diminish, or increase, in accordance with the law on benefits as set forth in chapter 71 of this title, any benefits previously awarded by the judge.

History: **En. 92-848 by Sec. 2, Ch. 537, L. 1975; R.C.M. 1947, 92-848(4); amd. Sec. 6, Ch. 63, L. 1979; amd. Sec. 62, Ch. 464, L. 1987.**

Cross-References

"Division" defined, 39-71-116.

"Insurer" defined, 39-71-116.

"Order" defined, 39-71-116.

39-71-2910. Stay pending posttrial motions and appeal. (1) Upon the filing of a judgment or order of the workers' compensation judge, a party may apply to the workers' compensation judge, upon notice or ex parte, for a stay of execution of the judgment or order. The stay may be for a period of time and be under conditions as the judge considers proper. A stay of execution under this subsection may not extend for more than 30 days following the judge's disposition of posttrial motions.

(2) The appellant may request of the workers' compensation judge or the supreme court, upon service of a notice of appeal, a stay of execution of the judgment or order pending resolution of the appeal. The appellant may request a stay by presenting a supersedeas bond to the workers' compensation judge and obtaining his approval of the bond. The bond must have two sufficient sureties or a corporate surety as authorized by law. A court granting a stay may waive the bond requirement. The procedure for requesting a stay and posting a supersedeas bond must be the same as the procedure in Rule 7(b), Montana Rules of Appellate Procedure.

History: **En. Sec. 1, Ch. 74, L. 1989.**

Compiler's Comments

Effective Date: Section 4, Ch. 74, L. 1989, provided that this section is effective March 13, 1989.

Retroactive Applicability: Section 6, Ch. 74, L. 1989, provided: "[This act] is procedural in nature and applies retroactively, within the meaning of 1-2-109, to any case pending before the workers' compensation judge that has not been appealed to the Montana supreme court on or before [the effective date of this act]." Effective March 13, 1989.

39-71-2911 through 39-71-2913 reserved.

39-71-2914. Signing of petitions, pleadings, motions, and other papers — requirements — sanctions. (1) Every petition, pleading, motion, or other paper of a party appearing before the workers' compensation court and represented by an attorney must be signed by at least one attorney of record in his individual name. The signer's address also must be stated.

(2) A party who is not represented by an attorney shall sign his petition, pleading, motion, or other paper and state his address.

(3) The signature of an attorney or party constitutes a certificate by him that:

(a) he has read the petition, pleading, motion, or other paper;

(b) to the best of his knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact;

(c) it is warranted by existing law or by a good faith argument for the extension, modification, or reversal of existing law; and

(d) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(4) If a petition, pleading, motion, or other paper is signed in violation of this section, the court, upon motion or upon its own initiative, shall impose an appropriate sanction upon the person who signed it, a represented party, or both. The sanction may include an order to pay to the other party or parties the amount of the reasonable expense incurred because of the filing of the petition, pleading, motion, or other paper, including reasonable attorney fees.

History: En. Sec. 63, Ch. 464, L. 1987.

CHAPTER 72

OCCUPATIONAL DISEASE ACT OF MONTANA

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Part 1

General Provisions

39-72-101. Short title. This chapter may be cited as the "Occupational Disease Act of Montana".

History: **En. Sec. 1, Ch. 155, L. 1959; R.C.M. 1947, 92-1301; amd. Sec. 84, Ch. 397, L. 1979.**

39-72-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Beneficiary" is as defined in 39-71-116.

(2) "Child" is as defined in 39-71-116.

(3) "Department" means the department of labor and industry.

(4) "Disablement" means the event of becoming physically incapacitated by reason of an occupational disease from performing work in the worker's job pool. Silicosis, when complicated by active pulmonary tuberculosis, is presumed to be total disablement. "Disability", "total disability", and "totally disabled" are synonymous with "disablement", but they have no reference to "permanent partial disability".

(5) "Employee" is as defined in 39-71-118.

(6) "Employer" is as defined in 39-71-117.

(7) "Independent contractor" is as defined in 39-71-120.

(8) "Insurer" is as defined in 39-71-116.

(9) "Invalid" is as defined in 39-71-116.

(10) "Occupational disease" means harm, damage, or death as set forth in 39-71-119(1) arising out of or contracted in the course and scope of employment and caused by events occurring on more than a single day or work shift. The term does not include a physical or mental condition arising from emotional or mental stress or from a nonphysical stimulus or activity.

(11) "Order" is as defined in 39-71-116.

(12) "Pneumoconiosis" means a chronic dust disease of the lungs arising out of employment in coal mines and includes anthracosis, coal workers' pneumoconiosis, silicosis, or anthracosilicosis arising out of such employment.

(13) "Silicosis" means a chronic disease of the lungs caused by the prolonged inhalation of silicon dioxide (SiO_2) and characterized by small discrete nodules of fibrous tissue similarly disseminated throughout both lungs, causing the characteristic x-ray pattern, and by other variable clinical manifestations.

(14) "Wages" is as defined in 39-71-123.

(15) "Year" is as defined in 39-71-116(8) and 39-71-116(22).

History: (1) thru (10), (12) thru (17)En. 92-1303.1 by Sec. 1, Ch. 208, L. 1977; Sec. 92-1303.1, R.C.M. 1947; (11)En. Sec. 4, Ch. 155, L. 1959; amd. Sec. 1, Ch. 95, L. 1965; amd. Sec. 1, Ch. 41, L. 1971; Sec. 92-1304, R.C.M. 1947; R.C.M. 1947, 92-1303.1, 92-1304; amd. Sec. 1, Ch. 104, L. 1979; amd. Sec. 85, Ch. 397, L. 1979; amd. Sec. 64, Ch. 464, L. 1987; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

Eligibility for silicosis benefits — relationship to this chapter, 39-73-104.

39-72-103. No vested right to compensation. The right to the compensation provided for herein shall not nor shall the rate or amount thereof be or become vested or continuing rights in persons awarded compensation under this chapter or any amendment hereof, but the state reserves the right, by act of the legislature, to reduce the rate or amount of compensation thereafter to be received by any person theretofore or thereafter receiving compensation under this chapter or any amendment hereof or to wholly discontinue to all persons all compensation provided for by this chapter or any amendment hereof.

History: **En. Sec. 67, Ch. 155, L. 1959; R.C.M. 1947, 92-1367.**

39-72-104. Repealed. Sec. 68, Ch. 464, L. 1987.

History: **En. Sec. 68, Ch. 155, L. 1959; R.C.M. 1947, 92-1368.**

Part 2

Administrative Provisions

39-72-201. Administration of chapter. This chapter is administered by the department.

History: **En. Sec. 2, Ch. 155, L. 1959; amd. Sec. 188, Ch. 147, L. 1963; amd. Sec. 43, Ch. 182, L. 1975; R.C.M. 1947, 92-1302; amd. Sec. 37, Ch. 613, L. 1989.**

Compiler's Comments

1989 Amendment: Substituted "department" for "division of workers' compensation"; and made minor change in phraseology. Amendment effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

Cross-References

"Division" defined, 39-71-116, 39-72-102.

39-72-202. Powers of department. The department is hereby vested with full power, authority, and jurisdiction to do and perform any and all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of any power, authority, or jurisdiction conferred upon it under this chapter.

History: **En. Sec. 52, Ch. 155, L. 1959; amd. Sec. 24, Ch. 208, L. 1977; R.C.M. 1947, 92-1352; amd. Sec. 64, Ch. 613, L. 1989.**

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

"Division" defined, 39-71-116, 39-72-102.

39-72-203. Department to adopt rules. Subject to the provisions of this chapter, the department shall adopt and publish rules governing procedure before it and shall prescribe forms of notice and manner of serving the same in all claims for compensation and may change the same from time to time at its discretion.

History: **En. Sec. 45, Ch. 155, L. 1959; R.C.M. 1947, 92-1345; amd. Sec. 64, Ch. 613, L. 1989.**

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

"Division" defined, 39-71-116, 39-72-102.

39-72-204. Claim forms to be prescribed by department. Claims for compensation under this chapter shall be filed on forms prescribed and provided for by the department and shall be filed in the same manner as claims for compensation under the Workers' Compensation Act unless otherwise provided in this chapter.

History: En. Sec. 46, Ch. 155, L. 1959; amd. Sec. 23, Ch. 208, L. 1977; R.C.M. 1947, 92-1346; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Division" defined, 39-71-116, 39-72-102.

39-72-205. Repealed. Sec. 19, Ch. 104, L. 1979.

History: En. Sec. 58, Ch. 155, L. 1959; amd. Sec. 173, Ch. 147, L. 1963; amd. Sec. 25, Ch. 208, L. 1977; R.C.M. 1947, 92-1358.

39-72-206. Legal action by department. Upon request of the department, the attorney general shall institute and prosecute actions for the enforcement of the provisions of this chapter or for any penalty provided for in this chapter. The attorney general shall prosecute or defend all actions brought by or against the department in its official capacity. The department may compromise any action brought under this chapter.

History: En. Sec. 43, Ch. 155, L. 1959; amd. Sec. 189, Ch. 147, L. 1963; amd. Sec. 22, Ch. 208, L. 1977; R.C.M. 1947, 92-1343; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

Duties of Attorney General, 2-15-501.
"Division" defined, 39-71-116, 39-72-102.

Part 3

Coverage and Liability

39-72-301. Who subject to chapter. This chapter shall apply to and only to all employers and employees who now are or hereafter will be subject to the provisions of the Workers' Compensation Act of the state of Montana.

History: En. Sec. 7, Ch. 155, L. 1959; R.C.M. 1947, 92-1307(part).

39-72-302. Employer liability. There is imposed on every employer subject to this chapter a liability for the payment of compensation as herein provided.

History: En. Sec. 66, Ch. 155, L. 1959; R.C.M. 1947, 92-1366.

Cross-References

"Employer" defined, 39-71-117, 39-72-102.

39-72-303. Which employer liable. (1) Where compensation is payable for an occupational disease, the only employer liable shall be the employer in whose employment the employee was last injuriously exposed to the hazard of such disease.

(2) In the case of pneumoconiosis, any coal mine operator who has acquired a mine in the state or substantially all of the assets thereof from a person who was an operator of such mine on or after December 30, 1969, is liable for and must secure the payment of all benefits which would have been payable by that person with respect to miners previously employed in such mine if acquisition had not occurred and that person had continued to operate such mine, and the prior operator of such mine shall not be relieved of any liability under this section.

History: En. Sec. 10, Ch. 155, L. 1959; amd. Sec. 2, Ch. 190, L. 1971; R.C.M. 1947, 92-1310; amd. Sec. 1, Ch. 112, L. 1985.

Cross-References

"Employer" defined, 39-71-117, 39-72-102.

"Employee" defined, 39-71-118, 39-72-102.

"Occupational disease" defined, 39-72-102.

"Pneumoconiosis" defined, 39-72-102.

39-72-304. Physical examination of applicant for employment — no liability for occupational diseases found — procedure and requirements — rules. (1) An employer may give, within 2 weeks of the beginning of employment, a physical examination to an applicant for employment. Where an applicant for employment, whether he has been formerly employed by the employer to whom application is made or not, though not actually disabled, is found upon competent medical and x-ray examination to be afflicted with an occupational disease, the employer is not liable under this chapter for disability from the particular disease or diseases with which the employee is found to be afflicted or for any normal progression without aggravation of the disease or diseases if a report of the medical examination is approved by the department as provided in this section.

(2) The report of the medical examination of the applicant for employment and x-rays, if any, shall be delivered to the department by the employer within 15 days after the examination. With the medical report and x-rays, if any, there shall be attached a certificate by the examining physician certifying that the medical report is the report of the physical examination of the applicant for employment.

(3) The department shall submit the medical report and x-rays, if any, to a physician of its choice, and the physician shall report to the department his finding as to whether the medical report is satisfactory. The department shall, within 20 days after the receipt of the medical report from the employer, enter its order approving or disapproving the report and specifying the particular disease or diseases found. The order shall be in writing stating the reasons for the approval or disapproval. A copy of the order shall be mailed to the employer and the applicant for employment within 24 hours after the department has approved or disapproved the report.

(4) An applicant for employment may commence work prior to the approval or disapproval of the report by the department. However, if the department disapproves the report, the employer may discharge the applicant for employment without liability to him.

(5) If no physical examination is given to the applicant for employment within the 2-week period, the applicant for employment is fully eligible for the benefits under this chapter.

(6) The department may adopt reasonable rules relative to the form, execution, and filing of reports submitted under this section not inconsistent with the provisions of this chapter.

History: En. Sec. 30, Ch. 155, L. 1959; amd. Sec. 16, Ch. 208, L. 1977; R.C.M. 1947, 92-1330(2) thru (7); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Division" defined, 39-71-116, 39-72-102.
"Order" defined, 39-71-116, 39-72-102.
"Employer" defined, 39-71-117, 39-72-102.
"Employee" defined, 39-71-118, 39-72-102.
"Occupational disease" defined, 39-72-102.

39-72-305. Right to compensation exclusive remedy — uninsured employers. (1) The right to recover compensation pursuant to the provisions of this chapter for occupational diseases sustained by an employee and arising out of and in the course of employment, whether resulting in death or not, is the exclusive remedy therefor against an employer who is properly insured under the Workers' Compensation Act and the Occupational Disease Act of Montana.

(2) The provisions of the Workers' Compensation Act relating to uninsured employers and benefits due uninsured claimants apply to and are incorporated as part of this chapter.

History: En. Sec. 8, Ch. 155, L. 1959; R.C.M. 1947, 92-1308; amd. Sec. 2, Ch. 104, L. 1979.

Cross-References

"Employer" defined, 39-71-117, 39-72-102.
"Employee" defined, 39-71-118, 39-72-102.
"Occupational disease" defined, 39-72-102.

39-72-306 through 39-72-309. Repealed. Sec. 19, Ch. 104, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

39-72-306. En. Sec. 30, Ch. 155, L. 1959; amd. Sec. 16, Ch. 208, L. 1977; R.C.M. 1947, 92-1330(1).

39-72-307. En. Sec. 41, Ch. 155, L. 1959; R.C.M. 1947, 92-1341.

39-72-308. En. Sec. 31, Ch. 155, L. 1959; R.C.M. 1947, 92-1331.

39-72-309. En. Sec. 39, Ch. 155, L. 1959; amd. Sec. 20, Ch. 208, L. 1977; R.C.M. 1947, 92-1339.

39-72-310. Occupational disease coverage under workers' compensation plans. (1) Every employer enrolled under compensation plan No. 1, every insurer under compensation plan No. 2, and the state fund under compensation plan No. 3, all provided for under the Workers' Compensation Act, are considered to also provide full coverage for claims under this chapter. Any policy of insurance for workers' compensation coverage under the Workers' Compensation Act written by a private insurance carrier or the state fund is considered to provide full occupational disease coverage under the provisions of this chapter.

(2) Except as provided in this chapter, the department shall apply the appropriate provisions of Title 39, chapter 71, parts 21, 22, and 23, to the administration of The Occupational Disease Act of Montana in the same manner as they are applied to the administration of the Workers' Compensation Act.

(3) Under compensation plan No. 3, any premiums and other receipts held by the state fund for occupational disease insurance coverage must be transferred to the workers' compensation industrial insurance account, and payments for occupational disease claims by the state fund must be paid out of the industrial insurance account.

History: En. 92-1334.1 by Sec. 17, Ch. 208, L. 1977; R.C.M. 1947, 92-1334.1; amd. Sec. 38, Ch. 613, L. 1989.

Compiler's Comments

1989 Amendment: In (1), in two places, changed "state compensation insurance fund" to "state fund" and deleted citations to various plans; in (2) changed "division" to "department"; in (3) changed "division" to "state fund"; and made minor changes in phraseology. Amendment effective on the earlier of signing of executive order creating state compensation mutual insurance fund or January 1, 1990.

Cross-References

"Division" defined, 39-71-116, 39-72-102.
"Insurer" defined, 39-71-116, 39-72-102.
"Employer" defined, 39-71-117, 39-72-102.
"Occupational disease" defined, 39-72-102.

Part 4

Presentment and Payment of Claims Generally

39-72-401. Payment of compensation subject to provisions of chapter. When he has complied with other provisions of this chapter, compensation shall be paid to a claimant who becomes disabled by reason of occupational disease arising out of his employment, subject to the conditions set forth in this chapter.

History: En. Sec. 11, Ch. 155, L. 1959; amd. Sec. 1, Ch. 92, L. 1965; amd. Sec. 2, Ch. 208, L. 1977; R.C.M. 1947, 92-1311(part).

Cross-References

"Occupational disease" defined, 39-72-102.

39-72-402. Practice and procedure — applicability of Workers' Compensation Act. (1) Except as otherwise provided in this chapter, the practice and procedure prescribed in the Workers' Compensation Act applies to all proceedings under this chapter.

(2) Sections 39-71-304, 39-71-403, 39-71-406, 39-71-409, 39-71-411 through 39-71-413, and 39-71-742 in the Workers' Compensation Act specifically apply to and are incorporated as part of this chapter.

History: En. Sec. 7, Ch. 155, L. 1959; R.C.M. 1947, 92-1307(part); amd. Sec. 3, Ch. 104, L. 1979.

39-72-403. Time when claims must be presented. (1) When a claimant seeks benefits under this chapter, his claims for benefits must be presented in writing to the employer, the employer's insurer, or the department within 2 years from the date the claimant knew or should have known that his total disability condition resulted from an occupational disease. When a beneficiary seeks benefits under this chapter, his claims for death benefits must be presented in writing to the employer, the employer's insurer, or the department within 1 year from the date the beneficiaries knew or should have known that the decedent's death was related to an occupational disease.

(2) The department may, upon a reasonable showing by the claimant or a decedent's beneficiaries that the claimant or the beneficiaries could not have known that the claimant's condition or the employee's death was related to

an occupational disease, waive the claim time requirement up to an additional 2 years.

History: **En. 92-1312.1 by Sec. 3, Ch. 208, L. 1977; R.C.M. 1947, 92-1312.1; amd. Sec. 2, Ch. 112, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.**

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Beneficiary" defined, 39-71-116, 39-72-102.
"Division" defined, 39-71-116, 39-72-102.
"Insurer" defined, 39-71-116, 39-72-102.
"Year" defined, 39-71-116, 39-72-102.
"Employer" defined, 39-71-117, 39-72-102.
"Employee" defined, 39-71-118, 39-72-102.
"Occupational disease" defined, 39-72-102.

39-72-404. False representation by employee concerning previous occupational disease. No compensation shall be payable for an occupational disease if the employee, at the time of entering the employment of the employer by whom the compensation would otherwise be payable, knowingly represented himself in writing as not having previously been disabled, laid off, or compensated in damages or otherwise because of such disease when the contrary is true.

History: **En. Sec. 42, Ch. 155, L. 1959; R.C.M. 1947, 92-1342.**

Cross-References

"Employer" defined, 39-71-117, 39-72-102.
"Employee" defined, 39-71-118, 39-72-102.
"Occupational disease" defined, 39-72-102.

39-72-405. General limitations on payment of compensation. (1) Compensation may not be paid when the last day of the injurious exposure of the employee to the hazard of the occupational disease has occurred prior to July 1, 1959.

(2) When any employee in employment on or after January 1, 1959, because he has an occupational disease incurred in and caused by such employment which is not yet disabling, is discharged or transferred from the employment in which he is engaged or when he ceases his employment and it is in fact, as determined by the medical panel, inadvisable for him on account of a nondisabling occupational disease to continue in employment and he suffers wage loss by reason of the discharge, transfer, or cessation, the department may allow compensation on account thereof as it considers just, not exceeding $10,000.

History: **En. Sec. 11, Ch. 155, L. 1959; amd. Sec. 1, Ch. 92, L. 1965; amd. Sec. 2, Ch. 208, L. 1977; R.C.M. 1947, 92-1311(1)(a) thru (d); amd. Sec. 4, Ch. 104, L. 1979; amd. Sec. 3, Ch. 112, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.**

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Division" defined, 39-71-116, 39-72-102.
"Employer" defined, 39-71-117, 39-72-102.
"Employee" defined, 39-71-118, 39-72-102.
"Disablement" defined, 39-72-102.
"Occupational disease" defined, 39-72-102.
"Silicosis" defined, 39-72-102.

39-72-406. Repealed. Sec. 5, Ch. 112, L. 1985.

History: **En. Sec. 11, Ch. 155, L. 1959; amd. Sec. 1, Ch. 92, L. 1965; amd. Sec. 2, Ch. 208, L. 1977; R.C.M. 1947, 92-1311(2); amd. Sec. 5, Ch. 104, L. 1979.**

39-72-407. Repealed. Sec. 5, Ch. 112, L. 1985.

History: En. Sec. 11, Ch. 155, L. 1959; amd. Sec. 1, Ch. 92, L. 1965; amd. Sec. 2, Ch. 208, L. 1977; R.C.M. 1947, 92-1311(3).

39-72-408. Proximate causation. Occupational diseases shall be deemed to arise out of the employment only if:

(1) there is a direct causal connection between the conditions under which the work is performed and the occupational disease;

(2) the disease can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment;

(3) the disease can be fairly traced to the employment as the proximate cause;

(4) the disease does not come from a hazard to which workmen would have been equally exposed outside of the employment;

(5) the disease is incidental to the character of the business and not independent of the relation of employer and employee.

History: En. Sec. 5, Ch. 155, L. 1959; amd. Sec. 1, Ch. 40, L. 1971; R.C.M. 1947, 92-1305.

Cross-References

"Employer" defined, 39-71-117, 39-72-102.

"Employee" defined, 39-71-118, 39-72-102.

"Occupational disease" defined, 39-72-102.

Part 5

Standards for Determining Whether Death or Disability Due to Pneumoconiosis

39-72-501 through 39-72-508. Repealed. Sec. 19, Ch. 104, L. 1979.

Compiler's Comments

Histories of Repealed Sections:

39-72-501. En. 92-1315.2 by Sec. 7, Ch. 208, L. 1977; R.C.M. 1947, 92-1315.2.

39-72-502. En. Sec. 5, Ch. 190, L. 1971; R.C.M. 1947, 92-1315.1.

39-72-503 through 39-72-508. En. Sec. 15, Ch. 155, L. 1959; amd. Sec. 4, Ch. 190, L. 1971; amd. Sec. 6, Ch. 208, L. 1977; R.C.M. 1947, 92-1315(1) through (6).

39-72-509. Benefits for pneumoconiosis. Pneumoconiosis is an occupational disease that is compensable under this chapter. However, any benefits granted a claimant under this chapter for pneumoconiosis must be reduced, but not below zero, by an amount equal to the benefits granted the claimant under any program under federal law that pays benefits for a claimant suffering disability from pneumoconiosis.

History: En. Sec. 6, Ch. 104, L. 1979.

Cross-References

"Occupational disease" defined, 39-72-102.

"Pneumoconiosis" defined, 39-72-102.

Part 6

Medical Examinations — Determining Compensability of Claims

39-72-601. Medical panel. (1) The department shall develop a list of physicians to serve on the occupational disease medical panel. The list may include physicians nominated by the board of medical examiners. A physician on the panel must be certified by his specialty board or be eligible for certification in the specialty area appropriate to the claimant's condition in relation to this chapter.

(2) The department shall select a panel physician to examine a claimant, as required. The department shall appoint, as required, one member of the panel to be the chairman.

History: En. Sec. 14, Ch. 155, L. 1959; amd. Sec. 4, Ch. 208, L. 1977; R.C.M. 1947, 92-1314; amd. Sec. 7, Ch. 104, L. 1979; amd. Sec. 1, Ch. 162, L. 1989; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

1989 Amendment: Chapter 162 substituted language concerning list of physicians to serve on panel and requiring Department to select a panel physician to examine a claimant for former section that read: "(1) The Montana medical association may, at least annually, certify to the division as nominees 10 or more licensed physicians of the state to serve on the medical panel. At least three of the physicians must have had at the time of certification at least 5 years' practice in the diagnosis, care, and treatment of pulmonary diseases and the interpretation of x-ray films. At least three of the physicians must have had at the time of certification qualifications in the diagnosis, care, and treatment of nonpulmonary occupational diseases.

(2) From the list submitted as provided for in this section, the division shall appoint five or more physicians to serve on the medical panel.

(3) If the Montana medical association fails to submit the list of nominees as provided for in this section, the division shall appoint as members of the medical panel five or more licensed physicians in the state. Three of the panel members must have had at the time of appointment at least 5 years' practice in the diagnosis, care, and treatment of pulmonary diseases and the interpretation of x-ray films.

(4) The panel members shall appoint one member of the panel to be the chairman." Amendment effective July 1, 1989.

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Effective Date — Retroactive Applicability: Section 6, Ch. 162, L. 1989, provided: "(1) [This act] is effective July 1, 1989.

(2) [This act] applies retroactively, within the meaning of 1-2-109, to all occupational disease claims pending before the division."

Cross-References

"Division" defined, 39-71-116, 39-72-102.

39-72-602. Insurer may accept liability — procedure for medical examination when insurer has not accepted liability. (1) An insurer may accept liability for a claim under this chapter based on information submitted to it by a claimant.

(2) In order to determine the compensability of claims under this chapter when an insurer has not accepted liability, the following procedure must be followed:

(a) The department shall direct the claimant to a member of the medical panel for an examination. The panel member shall conduct an examination to determine whether the claimant is totally disabled and is suffering from an occupational disease. The panel member shall submit a report of his findings to the department.

(b) Either the claimant or the insurer may, within 20 days after the receipt of the report by the first panel member, request that the claimant be examined by a second panel member. If a second examination is requested, the department shall direct the claimant to a second panel member who shall conduct an examination to determine whether he believes the claimant is totally disabled and is suffering from an occupational disease. The panel member shall submit a report of his findings to the department. When a second examination has been requested, the reports of the examinations shall be submitted to three members of the medical panel for review. A medical panel member or the panel may, in order to assist the panel member or the panel in reaching a conclusion, consult with the claimant's attending physician. The three panel members shall issue a report concerning the claimant's physical condition and whether the claimant is suffering from an occupational disease.

(c) If a second examination is not requested, the department shall issue its order determining whether the claimant is entitled to occupational disease benefits based on the report of the first examining physician. If a second examination is requested, the department shall issue its order based on the report of the three members of the medical panel.

(d) For the purpose of reviewing the reports of the examinations and issuing the report under subsection (2)(b), the three members of the medical panel shall be the two members of the panel who examined the claimant and the panel chairman. If the panel chairman has examined the claimant, the panel chairman shall appoint another member of the medical panel to be the third member.

History: En. 92-1314.1 by Sec. 5, Ch. 208, L. 1977; R.C.M. 1947, 92-1314.1(1); amd. Sec. 8, Ch. 104, L. 1979; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Division" defined, 39-71-116, 39-72-102.
"Insurer" defined, 39-71-116, 39-72-102.
"Order" defined, 39-71-116, 39-72-102.
"Occupational disease" defined, 39-72-102.

39-72-603. Repealed. Sec. 19, Ch. 104, L. 1979.

History: En. 92-1314.1 by Sec. 5, Ch. 208, L. 1977; R.C.M. 1947, 92-1314.1(2).

39-72-604. Repealed. Sec. 19, Ch. 104, L. 1979.

History: En. Sec. 16, Ch. 155, L. 1959; amd. Sec. 8, Ch. 208, L. 1977; R.C.M. 1947, 92-1316.

39-72-605. When occupational disease causes death. When an occupational disease is claimed to have caused death and a claim for death benefits is filed therefor, the department shall select at least two physicians who in the department's judgment could properly determine the condition regarding the decedent's death in relation to a possible occupational disease, and the physicians shall examine all available evidence pertaining to the claim and shall make findings and report to the department. The report is prima facie evidence of fact as to the matters therein contained.

History: En. Sec. 17, Ch. 155, L. 1959; amd. Sec. 9, Ch. 208, L. 1977; R.C.M. 1947, 92-1317; amd. Sec. 9, Ch. 104, L. 1979; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Division" defined, 39-71-116, 39-72-102.
"Occupational disease" defined, 39-72-102.

39-72-606. Autopsy. Upon the filing of a claim for compensation for death caused by an occupational disease if an autopsy is necessary to determine the cause of death, an autopsy shall be ordered by the department. The autopsy shall be made under the supervision of the county coroner or a medical examiner. The department may designate a duly licensed physician who is a specialist in such examinations to perform or attend the autopsies and to certify his findings thereon. The findings shall be examined by the physicians submitting a report under 39-72-605 before the final report under that section is submitted to the department.

History: **En. Sec. 18, Ch. 155, L. 1959; amd. Sec. 10, Ch. 208, L. 1977; R.C.M. 1947, 92-1318; amd. Sec. 27, Ch. 7, L. 1979; amd. Sec. 10, Ch. 104, L. 1979; amd. Sec. 64, Ch. 613, L. 1989.**

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Division" defined, 39-71-116, 39-72-102.
"Occupational disease" defined, 39-72-102.

39-72-607. Periodic medical examinations. (1) Upon the request of the department or the insurer, each employee entitled to compensation shall submit to a medical examination from time to time by a physician designated by the department who is a member of the appropriate medical panel. The examination shall be at a place reasonably convenient for the employee.

(2) The order directing the examination shall fix a time and place having regard to the convenience of the employee, his physical condition, and his ability to attend. The employee and any other party in interest may have a physician present at the examination if the physician is provided and paid for by the employee or other party.

(3) If the employee refuses to submit to the examination or obstructs the examination, his right to compensation is suspended until the examination has been made, and no compensation is payable during or for the period of suspension.

(4) A physician who makes or is present at the examination may be required to testify as to the result thereof.

History: **En. Sec. 19, Ch. 155, L. 1959; amd. Sec. 11, Ch. 208, L. 1977; R.C.M. 1947, 92-1319(1) thru (4); amd. Sec. 64, Ch. 613, L. 1989.**

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Division" defined, 39-71-116, 39-72-102.
"Insurer" defined, 39-71-116, 39-72-102.
"Order" defined, 39-71-116, 39-72-102.
"Employee" defined, 39-71-118, 39-72-102.

39-72-608. Payment of medical examination, report, and autopsy expenses. The expense of the first medical examination and report as provided in 39-72-602 must be borne by the insurer. The expense of a reexamination and panel report must be borne by the dissatisfied party requesting the reexamination. The expense of the periodic medical examinations and reports, as provided in 39-72-607, must be borne by the party requesting the periodic medical examination. The expense of the autopsy, as provided for in 39-72-606, must be borne by the party requesting the autopsy.

History: **En. Sec. 20, Ch. 155, L. 1959; amd. Sec. 12, Ch. 208, L. 1977; R.C.M. 1947, 92-1320; amd. Sec. 11, Ch. 104, L. 1979; amd. Sec. 2, Ch. 162, L. 1989.**

Compiler's Comments

1989 Amendment: In first sentence, after "examination", inserted "and report"; in second sentence, after "reexamination", inserted "and panel report"; in third sentence, after "examinations", inserted "and reports"; and made minor changes in phraseology. Amendment effective July 1, 1989.

Effective Date — Retroactive Applicability: Section 6, Ch. 162, L. 1989, provided: "(1) [This act] is effective July 1, 1989.

(2) [This act] applies retroactively, within the meaning of 1-2-109, to all occupational disease claims pending before the division."

Cross-References

"Insurer" defined, 39-71-116, 39-72-102.

39-72-609. Report of medical panel prima facie evidence. A report submitted to the department by the appropriate medical panel and placed in the department's records is prima facie evidence as to the matters contained in the report.

History: En. 92-1314.1 by Sec. 5, Ch. 208, L. 1977; R.C.M. 1947, 92-1314.1(3); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Division" defined, 39-71-116, 39-72-102.

39-72-610. Report of and examinations conducted by medical panel. (1) At a hearing held before the department or the workers' compensation judge, there is a rebuttable presumption that the report of the medical panel and any medical examination reports by members of the medical panel are correct.

(2) The claimant or the insurer may present additional medical information in order to rebut the medical examination report of a panel member or a panel report.

History: En. 92-1314.1 by Sec. 5, Ch. 208, L. 1977; R.C.M. 1947, 92-1314.1(5); amd. Sec. 12, Ch. 104, L. 1979; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Division" defined, 39-71-116, 39-72-102.

"Insurer" defined, 39-71-116, 39-72-102.

39-72-611. Hearing on determination — when. Upon the department's own motion or if a claimant or an insurer requests that a hearing be held by the department prior to the time the department issues its final determination concerning the claimant's entitlement to occupational disease benefits, the department shall hold a hearing.

History: En. 92-1314.1 by Sec. 5, Ch. 208, L. 1977; R.C.M. 1947, 92-1314.1(4); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Division" defined, 39-71-116, 39-72-102.

"Insurer" defined, 39-71-116, 39-72-102.

"Occupational disease" defined, 39-72-102.

39-72-612. Hearing and appeal to workers' compensation judge. (1) Within 20 days after the department has issued its order of determination as to whether the claimant is entitled to benefits under this chapter, a party may request a hearing. In order to perfect an appeal to the workers' compensation judge, the appealing party shall request a hearing before the department. The department shall grant a hearing, and the department's final determination may not be issued until after the hearing.

(2) Appeals from a final determination of the department must be made to the workers' compensation judge within 30 days after the department has issued its final determination. The judge, after a hearing held pursuant to 39-71-2903 and 39-71-2904, shall make a final determination concerning the claimant's claim. The judge may overrule the department only on the basis that the department's determination is:

(a) in violation of constitutional or statutory provisions;

(b) in excess of the statutory authority of the agency;

(c) made upon unlawful procedure;

(d) affected by other error of law;

(e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

History: (1)En. 92-1314.1 by Sec. 5, Ch. 208, L. 1977; Sec. 92-1314.1, R.C.M. 1947; (2)En. Sec. 35, Ch. 155, L. 1959; amd. Sec. 172, Ch. 147, L. 1963; amd. Sec. 18, Ch. 208, L. 1977; Sec. 92-1335, R.C.M. 1947; R.C.M. 1947, 92-1314.1(6), 92-1335; amd. Sec. 13, Ch. 104, L. 1979; amd. Sec. 3, Ch. 162, L. 1989; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

1989 Amendment: Chapter 162 in four places in (1) substituted "hearing" for "rehearing", near beginning of third sentence substituted "shall" for "may" and after "grant a hearing and" deleted "if a rehearing is granted", and deleted last sentence that read: "If the division does not grant a rehearing, the division's final determination is issued on the date the rehearing is denied"; and made minor changes in phraseology. Amendment effective July 1, 1989.

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Effective Date — Retroactive Applicability: Section 6, Ch. 162, L. 1989, provided: "(1) [This act] is effective July 1, 1989.

(2) [This act] applies retroactively, within the meaning of 1-2-109, to all occupational disease claims pending before the division."

Cross-References

"Division" defined, 39-71-116, 39-72-102.

"Order" defined, 39-71-116, 39-72-102.

39-72-613. Costs and attorney fees. (1) If an insurer requests that a hearing be held before the department and the claim is determined compensable by the department after the hearing and the insurer does not appeal the department's decision to the workers' compensation judge, reasonable costs and attorney fees, as determined by the department, shall be paid to the claimant's attorney by the insurer.

(2) If an insurer appeals a decision of the department to the workers' compensation judge or from the judge to the supreme court and the claim is determined compensable, reasonable costs and attorney fees, as determined by the workers' compensation judge, shall be paid to the claimant's attorney by the insurer for proceedings before the department, the workers' compensation judge, and the supreme court.

History: En. Sec. 14, Ch. 104, L. 1979; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' com-

pensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References
"Division" defined, 39-71-116, 39-72-102.
"Insurer" defined, 39-71-116, 39-72-102.

Part 7

Compensation and Benefits

Part Cross-References
Occupational disease benefits exempt from medical services lien, 71-3-1118.

39-72-701. Compensation for total disability or death due to occupational disease other than pneumoconiosis. (1) The compensation to which an employee temporarily totally disabled or permanently totally disabled by an occupational disease other than pneumoconiosis, or the beneficiaries and dependents of the employee in the case of death caused by an occupational disease other than pneumoconiosis, are entitled under this chapter shall be the same payments which are payable to an injured employee, and such payments shall be made for the same period of time as is provided in cases of temporary total disability, permanent total disability, and in cases of injuries causing death under the Workers' Compensation Act.

(2) In cases where it is determined that periodic disability benefits granted by the Social Security Act are payable because of the disease, the weekly benefits payable under this section are reduced, but not below zero, by an amount equal as nearly as practical to one-half the federal periodic benefits for such week, which amount is to be calculated from the date of the disability social security entitlement.

History: En. Sec. 21, Ch. 155, L. 1959; amd. Sec. 6, Ch. 190, L. 1971; amd. Sec. 47, Ch. 535, L. 1975; R.C.M. 1947, 92-1321(part); amd. Sec. 88, Ch. 397, L. 1979; amd. Sec. 8, Ch. 21, L. 1981.

Cross-References
"Employee" defined, 39-71-118, 39-72-102.
"Occupational disease" defined, 39-72-102.
"Pneumoconiosis" defined, 39-72-102.

39-72-702. Repealed. Sec. 19, Ch. 104, L. 1979.

History: En. Sec. 21, Ch. 155, L. 1959; amd. Sec. 6, Ch. 190, L. 1971; amd. Sec. 47, Ch. 535, L. 1975; R.C.M. 1947, 92-1321(part); amd. Sec. 89, Ch. 397, L. 1979.

39-72-703. No compensation for partial disability. No compensation as provided in 39-72-701 is payable to an employee who is partially disabled from an occupational disease.

History: En. Sec. 22, Ch. 155, L. 1959; R.C.M. 1947, 92-1322; amd. Sec. 15, Ch. 104, L. 1979.

Cross-References
"Employee" defined, 39-71-118, 39-72-102.
"Occupational disease" defined, 39-72-102.

39-72-704. Medical and hospital expenses. In addition to the compensation provided by this chapter, an employee who becomes either totally or partially disabled from an occupational disease is entitled to receive for treatment of the occupational disease, without limitation as to length of time or dollar amount, reasonable medical services, hospitalization, medicines, and other treatment approved by the department.

History: **En. Sec. 25, Ch. 155, L. 1959; amd. Sec. 15, Ch. 208, L. 1977; R.C.M. 1947, 92-1325; amd. Sec. 16, Ch. 104, L. 1979; amd. Sec. 64, Ch. 613, L. 1989.**

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Division" defined, 39-71-116, 39-72-102.
"Employee" defined, 39-71-118, 39-72-102.
"Occupational disease" defined, 39-72-102.

39-72-705. Burial expenses. In addition to and separate and apart from any other compensation or benefit provided for in this chapter, there shall be paid in case of death of an employee, which death is the result of an occupational disease contracted in the course of employment, the reasonable burial expenses of the employee, not exceeding the maximum amount provided for in 39-71-725.

History: **En. Sec. 24, Ch. 155, L. 1959; amd. Sec. 14, Ch. 208, L. 1977; R.C.M. 1947, 92-1324.**

Cross-References

"Employee" defined, 39-71-118, 39-72-102.
"Occupational disease" defined, 39-72-102.

39-72-706. Aggravation. (1) If an occupational disease is aggravated by any other disease or infirmity not itself compensable or if disability or death from any other cause not itself compensable is aggravated, prolonged, accelerated, or in any way contributed to by an occupational disease, the compensation payable under this chapter must be reduced and limited to such proportion only of the compensation that would be payable if the occupational disease were the sole cause of the disability or death as such occupational disease as a causative factor bears to all the causes of such disability or death.

(2) If compensation is reduced a proportionate amount as in subsection (1) and the worker receives disability social security benefits, the offset entitlement granted to the insurer must be reduced in the same proportionate amount as the compensation as long as the worker continues to receive disability social security benefits.

History: **En. Sec. 26, Ch. 155, L. 1959; R.C.M. 1947, 92-1326; amd. Sec. 9, Ch. 21, L. 1981; amd. Sec. 4, Ch. 162, L. 1989.**

Compiler's Comments

1989 Amendment: Made minor changes in phraseology. Amendment effective July 1, 1989.

Effective Date — Retroactive Applicability: Section 6, Ch. 162, L. 1989, provided: "(1) [This act] is effective July 1, 1989.

(2) [This act] applies retroactively, within the meaning of 1-2-109, to all occupational disease claims pending before the division."

Cross-References

"Insurer" defined, 39-71-116, 39-72-102.

39-72-707. Silicosis with complications. In cases of disability or death from silicosis complicated with tuberculosis of the lungs, compensation shall be payable as for disability or death from an uncomplicated silicosis. In case of disability or death from silicosis when complicated with any disease not compensable under this chapter and other than pulmonary tuberculosis, compensation shall be reduced as provided in 39-72-706.

History: **En. Sec. 27, Ch. 155, L. 1959; R.C.M. 1947, 92-1327.**

Cross-References
"Silicosis" defined, 39-72-102.

39-72-708. Prohibiting supplementing of benefits. No person receiving compensation or benefits under chapter 73 of this title is entitled to compensation or benefits under this chapter.

History: **En. Sec. 32, Ch. 155, L. 1959; R.C.M. 1947, 92-1332(part); amd. Sec. 90, Ch. 397, L. 1979.**

39-72-709. Diminution of compensation. Compensation payable pursuant to the terms of this chapter to the claimant, his beneficiaries, or dependents shall be diminished by the amount of any compensation paid or to be paid him or them under the Workers' Compensation Act of Montana or any other workers' compensation act.

History: **En. Sec. 33, Ch. 155, L. 1959; R.C.M. 1947, 92-1333.**

39-72-710. Repealed. Sec. 19, Ch.104, L. 1979.

History: **En. Sec. 37, Ch. 155, L. 1959; amd. Sec. 19, Ch. 208, L. 1977; R.C.M. 1947, 92-1337.**

39-72-711. Lump-sum and compromise settlements. (1) No final and binding award made upon any claim pursuant to this chapter may be converted into a lump-sum payment, in whole or in part, except as provided in this section or 39-72-712.

(2) Whenever there are contested issues as to an insurer's liability for a claim under this chapter, including a claim based on 39-72-405(2), a claimant and an insurer may enter into a full and final compromise settlement of the claim. However, no such settlements are binding on the parties until approved by the department. After the department approves a full and final compromise settlement, the claim is closed and the insurer's liability for a settled claim is forever released.

History: **En. Sec. 23, Ch. 155, L. 1959; amd. Sec. 13, Ch. 208, L. 1977; R.C.M. 1947, 92-1323(part); amd. Sec. 17, Ch. 104, L. 1979; amd. Sec. 4, Ch. 112, L. 1985; amd. Sec. 64, Ch. 613, L. 1989.**

Compiler's Comments
Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References
"Division" defined, 39-71-116, 39-72-102.
"Insurer" defined, 39-71-116, 39-72-102.

39-72-712. Methods of deducting attorney's fee from compensation. If a claimant has entered into a contract of employment with an attorney for the recovery of benefits under this chapter and the terms of the employment contract are reasonable, the amount of the attorney's fee may be ordered by the department to be paid by the insurer and thereafter deducted proportionately from weekly payments thereafter to be made to the claimant under this chapter. The department may require payments to be deducted each week in an amount it considers advisable from the payments thereafter to be made to the claimant under this chapter and paid to the attorney as they are so deducted from the weekly payments to the claimant.

History: **En. Sec. 23, Ch. 155, L. 1959; amd. Sec. 13, Ch. 208, L. 1977; R.C.M. 1947, 92-1323(part); amd. Sec. 64, Ch. 613, L. 1989.**

Compiler's Comments
Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' com-

pensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Division" defined, 39-71-116, 39-72-102.

"Insurer" defined, 39-71-116, 39-72-102.

39-72-713. Repealed. Sec. 19, Ch. 104, L. 1979.

History: En. Sec. 29, Ch. 155, L. 1959; R.C.M. 1947, 92-1329.

39-72-714. Reduction or suspension of compensation for unsanitary or injurious practices or refusal to submit to medical or surgical treatment. The department may reduce or suspend the compensation of an employee who persists in unsanitary or injurious practices tending to imperil or retard his recovery or who refuses to submit to such medical or surgical treatment as is reasonably essential to promote his recovery.

History: En. Sec. 19, Ch. 155, L. 1959; amd. Sec. 11, Ch. 208, L. 1977; R.C.M. 1947, 92-1319(5); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Division" defined, 39-71-116, 39-72-102.

"Employee" defined, 39-71-118, 39-72-102.

CHAPTER 73

SILICOSIS BENEFITS

Part 1 — General Provisions

39-73-101. Definitions.
39-73-102. Administration — duties of department.
39-73-103. Conformity with acts of federal government.
39-73-104. Eligibility requirements for benefits.
39-73-105. Application for payment.
39-73-106. Investigation of applications.
39-73-107. Amount of payments.
39-73-108. Payment of benefits where person entitled is in institution.
39-73-109. Payment of benefits to surviving spouse.
39-73-110. Assistance not assignable or subject to legal process.
39-73-111. Representative payee — appointment — duties.

Part 1

General Provisions

39-73-101. Definitions. (1) "Payments" means money payments to persons having silicosis as herein defined.

(2) "Silicosis" means a fibrotic condition of the lungs due to the inhalation of silica dust.

(3) "Examining board" shall mean well-qualified physician or physicians, as designated by the department of labor and industry.

(4) The term "gainful occupation", as used herein, shall not be construed to mean occasional or intermittent light employment where the ability to do manual labor is not essential but shall mean any person having an income from any other source exceeding $150 per month.

History: (1) thru (3)En. Sec. 1, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 1, Ch. 225, L. 1961; amd. Sec. 1, Ch. 360, L. 1971; amd. Sec. 38, Ch. 182, L. 1975; Sec. 71-1001, R.C.M. 1947; (4)En. Sec. 3, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 1, Ch. 68, L. 1945; amd. Sec. 1, Ch. 216, L. 1947; amd. Sec. 1, Ch. 192, L. 1949; amd. Sec. 1, Ch. 42, L. 1953; amd. Sec. 1, Ch. 252, L. 1955; amd. Sec. 1, Ch. 3, L. 1961; amd. Sec. 3, Ch. 225, L. 1961; amd. Sec. 1, Ch. 267, L. 1965; amd. Sec. 1, Ch. 125, L. 1967; amd. Sec. 1, Ch. 260, L. 1969; amd. Sec. 1, Ch. 105, L. 1971; amd. Sec. 2, Ch. 360, L. 1971; amd. Sec. 1, Ch. 504, L. 1973; Sec. 71-1003, R.C.M. 1947; R.C.M. 1947, 71-1001, 71-1003(part); amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Silicosis" defined for Occupational Disease Act, 39-72-102.

39-73-102. Administration — duties of department. The department of labor and industry shall administer this chapter. The department shall:

(1) formulate a plan and adopt rules for the operation of this chapter;

(2) cooperate with the federal government in all matters of immediate concern pertaining to silicosis;

(3) designate the procedure to be followed in securing a competent medical examination for the purposes of determining silicosis in each individual applicant;

(4) designate suitable physicians or physician, well qualified to examine applicants for aid under this chapter;

(5) pay the actual transportation expenses of any applicant from the place of his residence in the state to the place of examination and return, from funds appropriated to the department for that purpose;

(6) develop and cooperate with other agencies in developing measures for the prevention of silicosis.

History: En. Sec. 2, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 2, Ch. 225, L. 1961; amd. Sec. 39, Ch. 182, L. 1975; R.C.M. 1947, 71-1002; amd. Sec. 2, Ch. 370, L. 1989; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

1989 Amendment: Chapter 370 deleted former (3) that read: "(3) publish an annual report and interim reports as may be necessary or required or asked for by the governor".

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

Administrative rulemaking procedure, Title 2, ch. 4, parts 1 through 3.

"Silicosis" defined, 39-73-101.

39-73-103. Conformity with acts of federal government. If and when the government of the United States makes grants to states in aid of and allowing payments to persons having silicosis, as herein defined, the department of labor and industry is hereby authorized to administer in the state of Montana such grants-in-aid and payments in addition to grants made by this chapter. The total payments to any individual under this chapter shall not exceed $200 per month, exclusive of any grants made by congress.

History: En. Sec. 8, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 3, Ch. 216, L. 1947; amd. Sec. 3, Ch. 192, L. 1949; amd. Sec. 2, Ch. 204, L. 1953; amd. Sec. 3, Ch. 252, L. 1955; amd. Sec. 2, Ch. 3, L. 1961; amd. Sec. 8, Ch. 225, L. 1961; amd. Sec. 3, Ch. 267, L. 1965; amd. Sec. 3, Ch. 125, L. 1967; amd. Sec. 3, Ch. 260, L. 1969; amd. Sec. 3, Ch. 105, L. 1971; amd. Sec. 3, Ch. 504, L. 1973; R.C.M. 1947, 71-1008; amd. Sec. 1, Ch. 559, L. 1981; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Silicosis" defined, 39-73-101.

39-73-104. Eligibility requirements for benefits. Payment shall be made under this chapter to any person who:

(1) has silicosis, as defined in 39-73-101, which results in his total disability so as to render it impossible for him to follow continuously any substantially gainful occupation;

(2) has resided in and been an inhabitant of the state of Montana for 10 years or more immediately preceding the date of the application;

(3) is not receiving, with respect to any month for which he would receive a payment under this chapter, compensation under The Occupational Disease Act of Montana, as provided by chapter 72 of this title, which will equal the sum of $200.

History: En. Sec. 3, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 1, Ch. 68, L. 1945; amd. Sec. 1, Ch. 216, L. 1947; amd. Sec. 1, Ch. 192, L. 1949; amd. Sec. 1, Ch. 42, L. 1953; amd. Sec. 1, Ch. 252, L. 1955; amd. Sec. 1, Ch. 3, L. 1961; amd. Sec. 3, Ch. 225, L. 1961; amd. Sec. 1, Ch. 267, L. 1965; amd. Sec. 1, Ch. 125, L. 1967; amd. Sec. 1, Ch. 260, L. 1969; amd. Sec. 1, Ch. 105, L. 1971; amd. Sec. 2, Ch. 360, L. 1971; amd. Sec. 1, Ch. 504, L. 1973; R.C.M. 1947, 71-1003(part); amd. Sec. 2, Ch. 559, L. 1981.

Cross-References

"Gainful occupation" defined, 39-73-101.

39-73-105. Application for payment. Application for payment under this chapter shall be made by the person seeking such payment to the department of labor and industry. The application shall be in writing or reduced to writing in the manner and upon the form prescribed by the department. The application form may be filled in and written by a person authorized by the department. If the applicant is unable to sign his or her name on the application, a duly witnessed mark may be used.

History: En. Sec. 5, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 5, Ch. 225, L. 1961; amd. Sec. 40, Ch. 182, L. 1975; R.C.M. 1947, 71-1005; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

39-73-106. Investigation of applications. (1) Whenever the department of labor and industry under this chapter receives an application for a payment, an investigation and record shall be promptly made of the validity of the claim. The object of such investigation shall be to ascertain whether or not the applicant is entitled to a payment under the provisions of this chapter and such other information as may be required by the rules of the department. The investigation of such applicant shall be conducted by representatives of the department. The physicians or physician designated by the department, as herein provided, shall constitute an examining board for such clinical, pathological, x-ray, and roentgen examinations as in the opinion of the examining board may be necessary to determine whether or not the applicant has silicosis, as herein defined. A certified report of such examination from the examining board of physicians or physician must be attached to the investigation report.

(2) Upon the completion of such investigation, the department shall determine whether or not the applicant is entitled to a payment under this chapter. The department shall then notify the applicant of its decision.

History: (1)En. Sec. 6, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 6, Ch. 225, L. 1961; amd. Sec. 41, Ch. 182, L. 1975; Sec. 71-1006, R.C.M. 1947; (2)En. Sec. 7, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 7, Ch. 225, L. 1961; amd. Sec. 42, Ch. 182, L. 1975; Sec. 71-1007, R.C.M. 1947; R.C.M. 1947, 71-1006, 71-1007; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' compensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References

"Examining board" defined, 39-73-101.

"Silicosis" defined, 39-73-101.

39-73-107. Amount of payments. Subject to the provisions of this chapter and the deductions herein provided, any person who has silicosis, as defined in this chapter, and who has, subject to the regulations and standards of the department of labor and industry, been determined by the department to be entitled payment under this chapter for silicosis shall be granted a payment by the department of $200 per month, subject to such appropriations as may from time to time be made. If he is receiving payments under The Occupational Disease Act of Montana, as provided by chapter 72 of this title, which are less in the aggregate than $200, then he is entitled to a payment under this chapter of the difference between the amount received under The Occupational Disease Act of Montana, as provided by chapter 72 of this title, and $200 per month. The legislature shall authorize such additional appropriations as may be necessary to make the increased monthly payments provided herein.

History: Ap. p. Sec. 3, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 1, Ch. 68, L. 1945; amd. Sec. 1, Ch. 216, L. 1947; amd. Sec. 1, Ch. 192, L. 1949; amd. Sec. 1, Ch. 42, L. 1953; amd. Sec. 1, Ch. 252, L. 1955; amd. Sec. 1, Ch. 3, L. 1961; amd. Sec. 3, Ch. 225, L. 1961; amd. Sec. 1, Ch. 267, L. 1965; amd. Sec. 1, Ch. 125, L. 1967; amd. Sec. 1, Ch. 260, L. 1969; amd. Sec. 1, Ch. 105, L. 1971; amd. Sec. 2, Ch. 360, L. 1971; amd. Sec. 1, Ch. 504, L. 1973; Sec. 71-1003, R.C.M. 1947; Ap. p. Sec. 4, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 2, Ch. 216, L. 1947; amd. Sec. 2, Ch. 192, L. 1949; amd. Sec. 1, Ch. 204, L. 1953; amd. Sec. 2, Ch. 252, L. 1955; amd. Sec. 1, Ch. 248, L. 1959; amd. Sec. 4, Ch. 225, L. 1961; amd. Sec. 2, Ch. 267, L. 1965; amd. Sec. 2, Ch. 125, L. 1967; amd. Sec. 2, Ch. 260, L. 1969; amd. Sec. 2, Ch. 105, L. 1971; amd. Sec. 2, Ch. 504, L. 1973; Sec. 71-1004, R.C.M. 1947; R.C.M. 1947, 71-1003(part), 71-1004; amd. Sec. 3, Ch. 559, L. 1981; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

Name Change — Code Commissioner Instruction: Section 64, Ch. 613, L. 1989, provided that in the provisions of the Montana Code Annotated, the terms "division of workers' compensation", "division", and "workers' com-

pensation division" are changed to "department of labor and industry" or "department", meaning the "department of labor and industry". Such change was made in this section.

Cross-References
"Silicosis" defined, 39-73-101.

39-73-108. Payment of benefits where person entitled is in institution. If any person who is entitled to benefits under this chapter shall be an inmate in any Montana state institution, benefits shall not be paid to him but shall be paid his beneficiary, if any, as defined in 39-71-116(2).

History: En. Sec. 3, Part 9, Ch. 82, L. 1937, as added by Sec. 1, Ch. 5, L. 1941; amd. Sec. 1, Ch. 68, L. 1945; amd. Sec. 1, Ch. 216, L. 1947; amd. Sec. 1, Ch. 192, L. 1949; amd. Sec. 1, Ch. 42, L. 1953; amd. Sec. 1, Ch. 252, L. 1955; amd. Sec. 1, Ch. 3, L. 1961; amd. Sec. 3, Ch. 225, L. 1961; amd. Sec. 1, Ch. 267, L. 1965; amd. Sec. 1, Ch. 125, L. 1967; amd. Sec. 1, Ch. 260, L. 1969; amd. Sec. 1, Ch. 105, L. 1971; amd. Sec. 2, Ch. 360, L. 1971; amd. Sec. 1, Ch. 504, L. 1973; R.C.M. 1947, 71-1003(c).

39-73-109. Payment of benefits to surviving spouse. (1) Upon the death of a person receiving payments for silicosis under 39-73-104 or 39-73-108, the surviving spouse, as long as such spouse remains unmarried, is entitled to receive the payments granted the deceased spouse.

(2) A person who otherwise is qualified to receive payments under subsection (1) of this section but whose spouse died prior to March 14, 1974, is hereby made eligible to begin receiving one-half of those payments; provided, however, a person is not eligible for these payments if such spouse's taxable income is $6,800 or more per year.

History: (1)En. 71-1010 by Sec. 1, Ch. 203, L. 1974; Sec. 71-1010, R.C.M. 1947; (2)En. 71-1010.1 by Sec. 1, Ch. 500, L. 1975; Sec. 71-1010.1, R.C.M. 1947; R.C.M. 1947, 71-1010, 71-1010.1; amd. Sec. 91, Ch. 397, L. 1979.

Cross-References
"Silicosis" defined, 39-73-101.

39-73-110. Assistance not assignable or subject to legal process. Except as otherwise provided in this chapter, assistance granted under this chapter is not transferable or assignable, at law or in equity, and none of the money paid or payable under this chapter is subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

History: En. Sec. 18, Part 1, Ch. 82, L. 1937; amd. Sec. 26, Ch. 121, L. 1974; R.C.M. 1947, 71-229.

39-73-111. Representative payee — appointment — duties. (1) The department of labor and industry may appoint a representative payee to apply for and receive payment of silicosis benefits on behalf of a person eligible for such payments or his beneficiary if the department determines that such appointment is in the best interests of the person or his beneficiary. The representative payee may be a person, a corporation, a government agency, or an institution, including a nursing home or extended care facility providing care for the person or his beneficiary.

(2) To determine the best interests of the eligible person or his beneficiary for appointment of a representative payee, the department may consider:

(a) a court determination of incompetence;

(b) medical evidence;

(c) relevant information from any person, corporation, government agency, or institution; and

(d) other relevant information.

(3) The department shall:

(a) determine the circumstances in which a representative payee may be appointed;

(b) establish procedures for his appointment; and

(c) establish the representative payee's responsibilities.

(4) The representative payee shall:

(a) act as a trustee to the person eligible for silicosis payments or his beneficiary in handling payments received; and

(b) maintain and expend such funds for the benefit and best interests of the eligible person or his beneficiary.

(5) The department's obligation under this chapter is fully discharged upon payment of benefits to the representative payee.

History: En. Sec. 1, Ch. 69, L. 1989; amd. Sec. 64, Ch. 613, L. 1989.

Compiler's Comments

1989 Amendment: Throughout section substituted references to Department of Labor and Industry for references to Division of Workers' Compensation.

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